

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--oOo--

EL DORADO CO. SUPERIOR CT.

FILED JUN 22 2007

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

BY *Lynn Carlin*
COURT OF Deputy
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN,

EL DORADO
COUNTY NO. P04CRF0132

Defendant and Appellant. /

--oOo--

REPORTER'S AUGMENT TRANSCRIPT ON APPEAL

From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado, having been tried before the:

Honorable EDDIE T. KELLER, Judge

--oOo--

COUNSEL

For Defendant-Appellant: SCOTT CONCKLIN
Attorney at Law
2205 Hilltop Drive, No. PMB-116
Redding, California 96002

For the Respondents: EDMUND G. BROWN JR.
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

REPORTED BY:

Katherine De Lacy, CSR No. 5432

CMS

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

DEPARTMENT NO. 2

HON. EDDIE T. KELLER, JUDGE

---oOo---

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

P04CRF0132

RICHARD WILLIAM HAMLIN,

Defendant./

---oOo---

REPORTER'S TRANSCRIPT ON PROCEEDINGS
TUESDAY, OCTOBER 25, 2005

---oOo---

A P P E A R A N C E S

For the People:

GARY LACY, District Attorney
County of El Dorado
515 Main Street
Placerville, California 95667
By: VICKI ASHWORTH, Deputy D.A.

For the Defendant:

RICK MEYER, Public Defender
County of El Dorado
630 Main Street
Placerville, California 95667
By: ROBERT BANNING, Assistant P.D.

RICHARD HAMLIN
In Propria Persona

REPORTED BY:

Katherine De Lacy, CSR No. 5432

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF EL DORADO

3
4 DEPARTMENT NO. 2

HON. EDDIE T. KELLER, JUDGE

5 ---oOo---

6 THE PEOPLE OF THE STATE OF CALIFORNIA,

7 Plaintiff,

8 vs.

P04CRF0132

9 RICHARD WILLIAM HAMLIN,

0 Defendant./

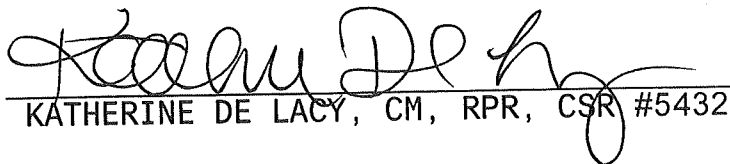
1 STATE OF CALIFORNIA }
2 COUNTY OF EL DORADO }

3 I, KATHERINE DE LACY, Certified Shorthand Reporter of
4 the State of California, do hereby certify the foregoing pages
5 1 through 34 are a true and accurate transcription of my said
6 stenographic notes taken in the above-entitled matter on:

7 DATE OF PROCEEDINGS: TUESDAY, OCTOBER 25, 2005

8 Dated at Placerville, California, this 22nd day of June,
9 2007.

0 I further certify, pursuant to CCP 237(a)(2), all juror
1 information either did not appear or has been redacted from
2 the transcript.

3
4 
5 KATHERINE DE LACY, CM, RPR, CSR #5432
6
7
8

CLERK'S CERTIFICATE OF DELIVERY OF TRANSCRIPT ON APPEAL
TO DISTRICT COURT OF APPEAL

--o0o--

STATE OF CALIFORNIA }
COUNTY OF EL DORADO } ss.

I, Lynn Cavin, Superior Court Clerk of El Dorado
County, State of California, and Ex-Officio Clerk of the
Superior Court, do hereby certify that on the 22nd day of
June, 2007, I delivered the original
Transcript on Appeal to the District Court of Appeal, Third
Appellate District, by registered mail, addressed to:

DEENA C. FAWCETT
Clerk of the District Court of Appeal
Third Appellate District
900 N Street
Sacramento, California 95814

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of the Superior Court this 22nd day of
June, 2007.

Lynn Cavin,
Superior Court Clerk

BY Lynn Cavin
Deputy

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

EL DORADO CO. SUPERIOR CT.

FILED JUN 11 2007

BY

Deputy

THE PEOPLE OF THE STATE
OF CALIFORNIA,

PLAINTIFF,

VS

RICHARD WILLIAM HAMLIN,

DEFENDANT.

COURT OF APPEAL
NO. C053982

EL DORADO COUNTY SUPERIOR
COURT CASE NO. P04CRF0132

**CLERK'S CERTIFICATE
OF MAILING**

I, LYNN CAVIN, Deputy Clerk of the Superior Court of the County of El Dorado, State of California, do hereby certify that I am a citizen of the United States and employed in the County of El Dorado; I am over the age of eighteen years and not a party to the within action; my business address is Superior Court of the State of California, County of El Dorado, 495 Main Street, Placerville, CA 95667; and that I delivered a copy of **ORDER DATED JUNE 8, 2007 FROM COURT OF APPEAL GRANTING APPELLANT'S MOTION TO AUGMENT THE RECORD ON APPEAL; AND, MINUTE ORDER DATED OCTOBER 25, 2005** to the individual(s) listed below:

KATHY DELACY
EL DORADO COUNTY SUPERIOR COURT
495 MAIN STREET
PLACERVILLE, CA 95667

I am familiar with the business practice of El Dorado County Superior Court with regard to collection and processing of documents for mailing. The documents described above were placed for collection and mailing in Placerville, California, through either the United States Post Office, Inter-Departmental Mail or Courthouse Attorney Box.

Executed on June 11, 2007 at Placerville, California.

EL DORADO COUNTY SUPERIOR COURT

BY:

LYNN CAVIN, APPEALS CLERK

CMS

IN THE
Court of Appeal of the State of California

IN AND FOR THE
THIRD APPELLATE DISTRICT

FILED

JUN - 8 2007

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT, Clerk
BY _____ Deputy

THE PEOPLE,
Plaintiff and Respondent,
v.
RICHARD WILLIAM HAMLIN,
Defendant and Appellant.

C053982
El Dorado County
No. P04CRF0132

BY THE COURT:

Appellant's motion to augment the record on appeal is granted. The appellate record is augmented to include the material requested in the attached copy of the motion, provided the items are on file or lodged with the trial court in this proceeding. (Cal. Rules of Court, rule 8.155(a)(1)(A).) The original and all copies of any sealed material shall be transmitted to this court under seal. No copies are to be sent to counsel. The augmented record is to be served and filed with this court by June 28, 2007. It is the trial court clerk's responsibility to notify the reporter of any required transcript and to assure that the entire augmented record is completed and filed within the time designated.

If the motion includes a request for audiotape or videotape exhibits, the trial court clerk shall provide and forward copies to all counsel. The original tapes shall be prepared in accordance with California Rules of Court, rule 8.224(b), and forwarded to this court. Any requested documentary exhibits shall be prepared and served as an augmented clerk's transcript.

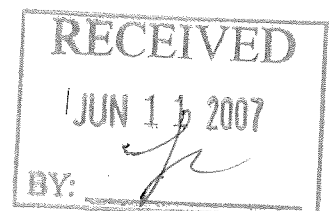
The time to file the appellant's opening brief is extended until 30 days after the filing of the augmented record with this court.

Dated: June 8, 2007

SCOTLAND, P.J.

cc: See Mailing List

CMS



COPY

SCOTT CONCKLIN
Attorney at Law [105090]
2205 Hilltop Drive, No. PMB-116
Redding, California 96002
(530) 243-8510

ATTORNEY FOR APPELLANT

FILED

MAY 30 2007

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT, Clerk
BY _____ Deputy

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

vs.

RICHARD HAMLIN,

Defendant and Appellant.

CASE NO. C053982

El Dorado County
Case No. P04CRF0132

APPLICATION TO AUGMENT RECORD ON APPEAL

Appellant requests that the **REPORTER'S TRANSCRIPT** be augmented to
include the following:

1. Opening Statements

Date: October 25, 2005

Department: 2

Judge: Hon. Eddie T. Keller

Reporter: Katherine De Lacy

Reference: RT 579

MEMORANDUM OF POINTS AND AUTHORITIES

A. AUTHORITY:

Augmentation should be granted upon a showing that the material may be useful on appeal. (*People v. Hill* (1967) 67 Cal.2d 105, 123-124.) Such should be liberally granted where some legitimate reason is shown. (*People v. Hagen* (1962) 203 Cal.App.2d 34, 39.)

In reviewing the adequacy of the showing, the court should be mindful that counsel on appeal will normally have no personal knowledge of the lower court proceedings, and must rely on the material provided in the normal record to determine and show whether requested material would be helpful to the appeal. (See *People v. Shambatuyev* (1996) 50 Cal.App.4th 267, 273-274.)

B. GROUNDS FOR REQUESTING OPENING STATEMENTS:

Appellant was convicted on one count of torture (Pen. Code, § 208) which was alleged to have occurred over a ten-month time span. A potential issue for appeal is whether a unanimity instruction was required, such as CALJIC No. 17.01. The trial court ruled that a unanimity instruction was not required because torture is a continuing course of conduct offense. (RT 1610.) The issue is whether the offense in this case falls within the continuous course of conduct exception (*People v. Jenkins* (1994) 29 Cal.App.4th 287.) or whether the evidence established multiple discrete offenses. (*People v. Sanchez* (2001) 94 Cal.App.4th 622.)

Because of the 10-month time span as alleged in Count 1, opening statements are requested to determine if the People made an election narrowing the underlying theory of prosecution. (See *People v. Jantz* (2006) 137 Cal.App.4th 1283 [election in opening and closing remarks obviates unanimity].)

DECLARATION OF COUNSEL

I, Scott Concklin, declare that I am counsel on appeal for appellant , appointed by the court of appeal, and I further declare as follows.

Although I have not completed review of the entire record, I have reviewed relevant portions of the read the record on appeal filed herein, including the pleadings, jury instructions, jury instruction conference, and closing arguments. The citations to the record set forth above accurately reflect the content thereof. For the reasons stated above, I believe that the additional record requested herein is necessary to the proper evaluation and determination of all of the potential issues on appeal that this case may present.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED:

SCOTT CONCKLIN

COUNTY OF EL DORADO

495 Main Street
Placerville, California 95667
Voice: (530) 621-6426
Fax: (530) 622-9774

APRIL 19, 2007

SCOTT CONCKLIN
ATTORNEY AT LAW
2205 HILLTOP DRIVE, PMB 116
REDDING, CA 96002

RE: PEOPLE OF THE STATE OF CALIFORNIA VS RICHARD WILLIAM HAMLIN
SUPERIOR COURT CASE NO. P04CRF0132 & P05CRF0161
COURT OF APPEAL NO. C053982

DEAR MR. CONCKLIN:

IN RESPONSE TO YOUR LETTER DATED APRIL 9, 2006, WHEREIN YOU INDICATED THAT PAGES 3993 THROUGH 4042 WERE MISSING FROM THE REPORTER'S TRANSCRIPT ON APPEAL FILED ON DECEMBER 19, 2006, PLEASE BE ADVISED THAT COURT REPORTER, KATHERINE DELACY, HAS INDICATED THAT THE PROCEEDINGS HELD ON JANUARY 5, 2006 WERE TRANSCRIBED AND INCLUDED AS PART OF THE REPORTER'S TRANSCRIPT ON APPEAL. APPARENTLY, THE COPY OF THE TRANSCRIPT WHICH YOU RECEIVED WAS MISSING PAGES 3993 THROUGH 4042 FROM VOLUME XVIII.

AS A RESULT, THE COURT REPORTER HAS PROVIDED A COPY OF PAGES 3993 THROUGH 4042 OF VOLUME XVIII OF THE REPORTER'S TRANSCRIPT ON APPEAL WHICH HAVE BEEN INCLUDED WITH THIS LETTER FOR INSERTION INTO THE REPORTER'S TRANSCRIPT.

PLEASE FEEL FREE TO CONTACT ME AT (530) 621-6496 SHOULD YOU HAVE ANY QUESTIONS REGARDING THIS MATTER.

VERY TRULY YOURS,

EL DORADO COUNTY SUPERIOR COURT
Lynn Cavin

BY: _____
LYNN CAVIN, APPEALS CLERK

SS:LC; ENCLS.

CC: DEENA C. FAWCETT, CLERK, COURT OF APPEAL, THIRD APPELLATE DISTRICT, 900 N STREET, ROOM 400, SACRAMENTO, CA 95814 (WITH PAGES 3993 THROUGH 4042 OF VOL. XVIII OF REPORTER'S TRANSCRIPT **IN THE EVENT THOSE PAGES ARE MISSING**)

EDMUND G. BROWN JR., ATTORNEY GENERAL, STATE OF CALIFORNIA, 1300 I ST., SUITE 1101, SACRAMENTO, CA 94244-2550 (WITH PAGES 3993 THROUGH 4042 OF VOL. XVIII OF REPORTER'S TRANSCRIPT **IN THE EVENT THOSE PAGES ARE MISSING**)

CMS

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

EL DORADO CO. SUPERIOR CT.

FILED APR 13 2007

BY

Deputy

THE PEOPLE OF THE STATE
OF CALIFORNIA,

COURT OF APPEAL
NO. C053982

PLAINTIFF,

EL DORADO COUNTY SUPERIOR
COURT CASE NO. P04CRF0132

VS

RICHARD WILLIAM HAMLIN,

**CLERK'S CERTIFICATE
OF MAILING**

DEFENDANT.

I, LYNN CAVIN, Deputy Clerk of the Superior Court of the County of El Dorado, State of California, do hereby certify that I am a citizen of the United States and employed in the County of El Dorado; I am over the age of eighteen years and not a party to the within action; my business address is Superior Court of the State of California, County of El Dorado, 495 Main Street, Placerville, CA 95667; and that I delivered a certified copy of **COPY OF APRIL 9, 2007 LETTER FROM ATTORNEY SCOTT CONCKLIN RE REPORTER'S TRANSCRIPT ON APPEAL** to the individual(s) listed below:

KATHY DELACY
EL DORADO COUNTY SUPERIOR COURT
495 MAIN STREET
PLACERVILLE, CA 95667

I am familiar with the business practice of El Dorado County Superior Court with regard to collection and processing of documents for mailing. The documents described above were placed for collection and mailing in Placerville, California, through either the United States Post Office, Inter-Departmental Mail or Courthouse Attorney Box.

Executed on April 13, 2007 at Placerville, California.

EL DORADO COUNTY SUPERIOR COURT

BY:

LYNN CAVIN, APPEALS CLERK

CMS

SCOTT CONCKLIN

ATTORNEY AT LAW

2205 Hilltop Drive, PMB. 116
Redding, California 96002
Phone (530) 243-8510

April 9, 2006

Superior Court
El Dorado County
495 Main Street
Placerville, California 95667

Attn: Appeals Clerk

RE: **RULE 35 LETTER**
People v. Hamlin
C053982
El Dorado P04CRF132 & P05CRF0161

Dear Clerk:

I am counsel on appeal, appointed by the Court of Appeal, for defendant and appellant. I have conducted a cursory review of the Reporter's Transcript in the above captioned case, and I believe that material has been inadvertently omitted, to wit:

REPORTER'S TRANSCRIPT, VOLUME 18, PAGES 3993-4042

According to the index to the Reporter's Transcript, the missing material is from January 5, 2006. The minute order is at CT 1732.

Please copy, certify, and transmit said documents to the Court of Appeal as an augmentation to the record, pursuant to Rule 35.

Sincerely,



Scott Concklin
Attorney for Appellant

CMS

*need
4/13/07*

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF EL DORADO**

495 Main Street
Placerville, California 95667
Voice: (530) 621-6426
Fax: (530) 622-9774

MARCH 5, 2007

SCOTT CONCKLIN
ATTORNEY AT LAW
2205 HILLTOP DRIVE, PMB, 116
REDDING, CA 96002

RE: THE PEOPLE OF THE STATE OF CALIFORNIA VS RICHARD WILLIAM HAMLIN
SUPERIOR COURT CASE NO. P04CRF0132 & P05CRF0161
COURT OF APPEAL NO. C053982

DEAR MR. CONCKLIN:

I AM RETURNING TO YOU VOLUMES VII AND VIII OF THE CLERK'S TRANSCRIPT ON
APPEAL IN THE ABOVE-ENTITLED MATTER WHICH I RECEIVED FROM YOU ON
TODAY'S DATE, MARCH 5, 2007.

**PLEASE BE ADVISED THAT VOLUMES VII AND VIII WERE PREVIOUSLY
REDACTED AND RETURNED TO THE CENTRAL CALIFORNIA APPELLATE
PROGRAM ON FEBRUARY 7, 2007, AT THE TIME THE ORIGINALS WERE
REDACTED AND FORWARDED TO THE THIRD DISTRICT COURT OF APPEAL
PURSUANT TO THEIR ORDER OF FEBRUARY 2, 2007.**

PLEASE FEEL FREE TO CONTACT ME AT (530) 621-6496 SHOULD YOU HAVE ANY
QUESTIONS REGARDING THIS MATTER.

VERY TRULY YOURS,

EL DORADO COUNTY SUPERIOR COURT

BY: Lynn Cavin
LYNN CAVIN, APPEALS CLERK

LC:SS
ENCLS.

CC: DEENA C. FAWCETT, CLERK, COURT OF APPEAL, THIRD APPELLATE DISTRICT,
900 N STREET, ROOM 400, SACRAMENTO, CA 95814 (LETTER ONLY)

CMS

SCOTT CONCKLIN

ATTORNEY AT LAW

2205 Hilltop Drive, PMB. 116
Redding, California 96002
Phone (530) 243-8510

3/1/07

Superior Court
El Dorado County
495 Main Street
Placerville, California 95667

Attn: Appeals Clerk

RE: *People v. Hamlin*
C053982
El Dorado P04CRF132 & P05CRF0161

Dear Clerk:

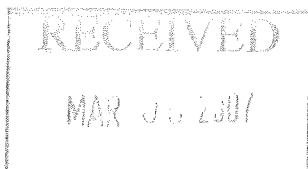
Enclosed are volumes 7 and 8 of the appellant's copy of the Clerk's Transcript in the above referenced case. These are being returned for redaction pursuant to the order of the Court of Appeal dated February 2, 2007.

I received these transcripts from CCAP subsequent to the order of February 2, so it is possible that my copies have already been redacted. I am returning them in case redaction is still required.

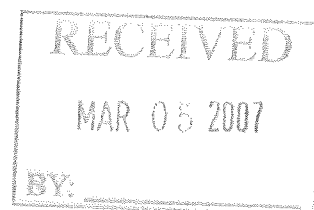
Sincerely,


Scott Concklin

Attorney for Appellant



CMS



SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO
495 Main Street
Placerville, CA 95667

People of the State of California
VS.
RICHARD WILLIAM HAMLIN

Case No: P04CRF0132

MINUTE ORDER

=====

EX-PARTE MINUTE ORDER RE: DOCUMENTS LOCATED IN MAIN ST. EXHIBIT

Date: 02/23/07 Time: 3:59 pm Dept/Div: 2

=====

Charges: 1) 206 PC-F C, 2) 273A(B) PC-M C, 3) 273A(B) PC-M C, 4) 273A(B)
5) 245(A)(1) PC-F D, 6) 422 PC-F C, 7) 273.5(A) PC-F Q

--- MORE CHARGES for this Case/defendant ---

Clerk: L.CAVIN

THE FOLLOWING DOCUMENTS ARE IN A BANKERS BOX
IN THE MAIN STREET EXHIBIT ROOM: SUBPOENAED
DOCUMENTS; SWORN JUROR QUESTIONNAIRES;
ORIGINAL VERDICTS; JURY INFORMATION; JURY
INSTRUCTIONS; REPORTER'S TRAN. OF GRAND JURY

HEARING CONCLUDED.

=====MINUTE ORDER END=====

Dispo

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF EL DORADO**

495 Main Street
Placerville, California 95667
Voice: (530) 621-6426
Fax: (530) 622-9774

FEBRUARY 20, 2007

DEENA C. FAWCETT, CLERK
COURT OF APPEAL
THIRD APPELLATE DISTRICT
900 N STREET, ROOM 400
SACRAMENTO, CA 95814

RE: THE PEOPLE OF THE STATE OF CALIFORNIA VS RICHARD WILLIAM HAMLIN
EL DORADO COUNTY NO. P04CRF0132 AND P05CRF0161
COURT OF APPEAL NO. C053982

DEAR MS. FAWCETT:

PURSUANT TO THE 3RD DISTRICT COURT OF APPEALS ORDER OF FEBRUARY 2, 2007, I HAVE REDACTED THE ATTORNEY GENERAL'S COPIES OF VOLUMES VII AND VIII OF THE CLERK'S TRANSCRIPT AND FORWARDED THEM TO THEIR OFFICE TODAY.

PLEASE FEEL FREE TO CONTACT ME AT (530) 621-6496 SHOULD YOU HAVE ANY QUESTIONS REGARDING THIS MATTER.

VERY TRULY YOURS,

EL DORADO COUNTY SUPERIOR COURT

BY: Lynn Cavin
LYNN CAVIN, APPEALS CLERK

LC:SS
ENCLS.

CC: (WITH REDACTED COPY OF VOLS. VII & VIII OF CLERK'S TRANSCRIPT):
EDMUND G. BROWN JR., ATTORNEY GENERAL, STATE OF CALIFORNIA, 1300 I STREET, SUITE
1101, SACRAMENTO, CA 94245-2550

CMS

OFFICE OF THE CLERK

Court of Appeal

THIRD APPELLATE DISTRICT

STATE OF CALIFORNIA

DEENA C. FAWCETT
CLERK/ADMINISTRATOR

NORMAN H. HAREBOTTLE
ASSISTANT CLERK/ADMINISTRATOR

DEPUTIES:

DARLENE A. WARNOCK
ANITA L. KENNER
SANDY GREEN
GAYLE KELLY
GRACE M. EMERO
ANA I. CAVAZOS
KATHI RUTHERDALE
SUSAN WELSH
KECIA WORLEY
TORI VOSS
SARAH J. HARMONING
ANA M. GUZMAN
KATHY WOJNAROWSKI

February 8, 2007

The Law Office of
Scott Concklin
PMB 116, 2205 Hilltop Drive
Redding, CA 96002

Re: The People v. Hamlin
C053982
El Dorado County
No. P04CRF0132

Dear Counsel:

Pursuant to the court's order, the corrected record on appeal has been received this date. Your appellant's opening brief is due by February 23, 2007.

Your attention is directed to rules 8.204(a) and 8.204(b) of the California Rules of Court. Rule 8.204(a) requires that any statement of fact be supported by appropriate references to the record. Rule 8.204(b) requires that all papers (including copies) be legible and bound in appropriate manuscript covers. Failure to comply with these rules may cause a brief to be stricken in accordance with rule 8.204(b).

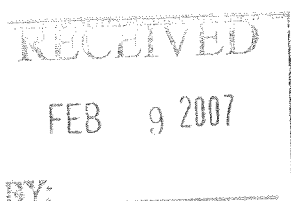
A request for extension of time for the filing of a brief may be denied if it is not supported by a detailed, factual showing of unusual circumstances. Unless the record is uncommonly lengthy or unusually complex, the first extension, if granted, will be limited to 30 days and may state that "No Further Time Will be Granted." A record consisting of one volume clerk's transcript and two volumes reporter's transcript is considered of average length.

Very truly yours,

DEENA C. FAWCETT
Clerk/Administrator

By: 
Deputy Clerk

cc: See Mailing List



CMS

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

FILED

FEB - 7 2007

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT, Clerk

BY _____ Deputy

THE PEOPLE,
Plaintiff and Respondent,
v.
RICHARD WILLIAM HAMLIN,
Defendant and Appellant.

C053982
El Dorado County
No. P04CRF0132

BY THE COURT:

Scott Concklin, Attorney at Law, is appointed as counsel for appellant in the above proceeding.

Briefing is suspended pending receipt of redacted record. Appellant's opening brief is to be served and filed 30 days after receipt of redacted record.

The court expects counsel to forthwith review the record on appeal and when necessary file any motion for augmentation of the record in compliance with rule 8.155 the California Rules of Court within 30 days or less of the date of this order. Exhibits may be obtained pursuant to rule 8.224 and should therefore not be included in a motion for augmentation.

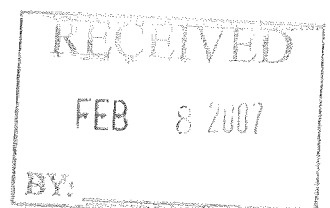
Dated: February 7, 2007

SCOTLAND, P.J.

(This appointment includes the authority to file a petition for review in the Supreme Court if the decision is adverse to your client or an answer should the other side file a petition for review.)

cc: See Mailing List

CMS



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF EL DORADO**

495 Main Street
Placerville, CA 95667
Voice: (530) 621-7683
Fax: (530) 672-2413

FEBRUARY 7, 2007

DEENA C. FAWCETT, CLERK
COURT OF APPEAL
THIRD APPELLATE DISTRICT
900 N STREET, ROOM 400
SACRAMENTO, CA 95814

RE: THE PEOPLE OF THE STATE OF CALIFORNIA VS RICHARD WILLIAM HAMLIN
EL DORADO CO. SUPERIOR COURT CASE NO. P04CRF0132 AND P05CRF0161
COURT OF APPEAL NO. C053982

DEAR MS. FAWCETT:

PURSUANT TO THE 3RD DISTRICT COURT OF APPEALS ORDER FILED FEBRUARY 2, 2007,
ENCLOSED PLEASE FIND THE FOLLOWING DOCUMENTS:

[X] VOLUMES VII AND VIII OF CLERK'S TRANSCRIPT ON APPEAL REDACTED
PURSUANT TO CCP SECTION 237

REDACTED COPIES OF VOLUMES VII AND VIII HAVE BEEN SENT TO THE CENTRAL CALIFORNIA
APPELLATE PROGRAM. I AM AWAITING THE RETURN OF VOLUMES VII AND VIII FROM THE
OFFICE OF THE STATE ATTORNEY GENERAL AND WILL ADVISE YOU IN WRITING WHEN
REDACTED COPIES OF SAID VOLUMES HAVE BEEN PROVIDED TO THE ATTORNEY GENERAL'S
OFFICE.

PLEASE FEEL FREE TO CONTACT ME AT (530) 621-6496 SHOULD YOU HAVE ANY QUESTIONS
REGARDING THIS MATTER.

VERY TRULY YOURS,

EL DORADO COUNTY SUPERIOR COURT

Lynn Cavin

BY: _____
LYNN CAVIN, APPEALS CLERK

LC:SS
ENCLS.

CC: CENTRAL CALIFORNIA APPELLATE PROGRAM, 2407 J STREET, SUITE 301,
SACRAMENTO, CA 95816 (WITH REDACTED COPIES OF VOLS. VII & VIII OF
CLERK'S TRANSCRIPT)

JERRY BROWN, ATTORNEY GENERAL, STATE OF CALIFORNIA, 1300 I STREET, SUITE
1101, SACRAMENTO, CA 94244-2550 (WITH COPY OF LETTER ONLY)

CMS

IN THE
Court of Appeal of the State of California

IN AND FOR THE
THIRD APPELLATE DISTRICT

FILED

FEB - 2 2007

THE PEOPLE,
Plaintiff and Respondent,
v.
RICHARD WILLIAM HAMLIN,
Defendant and Appellant.

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT, Clerk
BY _____ Deputy

C053982
El Dorado County
No. P04CRF0132

BY THE COURT:

In reviewing the record on appeal, the court has discovered that the names of sworn jurors were not redacted as required by Code of Civil Procedure section 237 and rule 8.332 of the California Rules of Court. The clerk of this court and all counsel are directed to forthwith return volumes 7 and 8 of the clerk's transcript to the El Dorado County trial court clerk for redaction of the names of the sworn jurors located at pages 1939-1942, 1944-1945, 1947, 1949-1956, 2000-2007, 2200-2205, 2207-2210, 2253-2254, 2256-2259, 2272-2275, 2286-2301, 2303, 2306, 2307, 2346-2347, 2349 and 2350 of the clerk's transcript.

The clerk's transcript is to be corrected and returned to this court and counsel on or before February 22, 2007.

Dated: February 2, 2007

SCOTLAND, P.J.

cc: See Mailing List

CMS

OFFICE OF THE CLERK

Court of Appeal

THIRD APPELLATE DISTRICT

STATE OF CALIFORNIA

DEENA C. FAWCETT
CLERK/ADMINISTRATOR

NORMAN H. HAREBOTTLE
ASSISTANT CLERK/ADMINISTRATOR

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ANA M. GUZMAN
KATHY WOJNAROWSKI

January 31, 2007

Richard William Hamlin
F-49561
Deuel Vocational Institution
P.O. Box 600
Tracy, CA 95376

Re: The People v. Hamlin
C053982
El Dorado County
No. P04CRF0132

Dear Mr. Hamlin:

The record on appeal has been filed this day and assigned the above number. Your appellant's opening brief is to be served and filed on or before March 12, 2007.

A request for extension of time for the filing of a brief may be denied if it is not supported by a detailed, factual showing of unusual circumstances.

Please inform the court of any address change. **If you have not already requested court appointed counsel and wish to do so, please contact the Central California Appellate Program for the application form. Their address is shown on the included mailing list.**

Very truly yours,

DEENA C. FAWCETT
Clerk/Administrator

By:


Deputy Clerk

cc: See Mailing List

CMS

*need
2-1-07
hc*

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF EL DORADO**

495 Main Street
Placerville, California 95667
Voice: (530) 621-6426
Fax: (530) 622-9774

JANUARY 29, 2007

DEENA C. FAWCETT, CLERK
COURT OF APPEAL
THIRD APPELLATE DISTRICT
900 N STREET, ROOM 400
SACRAMENTO, CA 95814

RE: THE PEOPLE OF THE STATE OF CALIFORNIA VS RICHARD WILLIAM HAMLIN
EL DORADO COUNTY NO. P04CRF0132 AND P05CRF0161
COURT OF APPEAL NO. C053982

DEAR MS. FAWCETT:

PURSUANT TO THE NOTICE OF APPEAL FILED ON OCTOBER 19, 2006 AND THE AMENDED NOTICE OF APPEAL FILED ON NOVEMBER 2, 2006, ENCLOSED PLEASE FIND THE FOLLOWING DOCUMENTS REGARDING THE ABOVE-ENTITLED MATTER:

<input checked="" type="checkbox"/>	CLERK'S TRANSCRIPT ON APPEAL	(8) VOLS.
<input checked="" type="checkbox"/>	REPORTER'S TRANSCRIPT ON APPEAL	(19) VOLS.
<input checked="" type="checkbox"/>	CONFIDENTIAL ENVELOPES CONTAINING:	
1.	ORIGINAL OF PAGES 13 – 13 OF CLERK'S TRANSCRIPT	
2.	ORIGINAL OF PAGES 1150 –1151 OF CLERK'S TRANSCRIPT	
3.	ORIGINAL OF PAGES 2213 – 2226 OF CLERK'S TRANSCRIPT	
4.	ORIGINAL & 2 COPIES OF PAGES 101 – 103 OF CLERK'S TRANSCRIPT	
5.	ORIGINAL & 2 COPIES OF PAGES 461 – 600 OF CLERK'S TRANSCRIPT	
6.	ORIGINAL & 2 COPIES OF PAGES 601 – 649 OF CLERK'S TRANSCRIPT	
7.	ORIGINAL & 2 COPIES OF PAGES 650 – 883 OF CLERK'S TRANSCRIPT	
8.	ORIGINAL & 2 COPIES OF PAGES 884 – 901 OF CLERK'S TRANSCRIPT	
9.	ORIGINAL & 2 COPIES OF PAGES 902 – 1008 OF CLERK'S TRANSCRIPT	
10.	ORIGINAL & 2 COPIES OF PAGES 2153 – 2199 OF CLERK'S TRANSCRIPT	
11.	ORIGINAL & 2 COPIES OF PAGES 2276 – 2280 OF CLERK'S TRANSCRIPT	
12.	ORIGINAL & 1 COPY OF PAGES 172 – 181 OF REPORTER'S TRANSCRIPT	
13.	ORIGINAL & 1 COPY OF PAGES 4094 – 4101 OF REPORTER'S TRANSCRIPT	

CMS

DEENA C. FAWCETT, CLERK
COURT OF APPEAL - THIRD APPELLATE DISTRICT
RE: THE PEOPLE OF THE STATE OF CALIFORNIA VS RICHARD WILLIAM HAMLIN
EL DORADO COUNTY NO. P04CRF0132 AND P05CRF0161
COURT OF APPEAL NO. C053982

JANUARY 29, 2007

PAGE TWO

PLEASE FEEL FREE TO CONTACT ME AT (530) 621-6496 SHOULD YOU HAVE ANY QUESTIONS REGARDING THIS MATTER.

VERY TRULY YOURS,

EL DORADO COUNTY SUPERIOR COURT

Lynn Cavin

BY: _____
LYNN CAVIN, APPEALS CLERK

LC:SS

ENCLS.

CC: (WITH COPY OF CLERK'S & REPORTER'S TRANSCRIPTS):

CENTRAL CALIFORNIA APPELLATE PROGRAM, 2407 J. STREET, SUITE 301, SACRAMENTO, CA
95816 (WITH CONFIDENTIAL ENVELOPES CONTAINING COPY OF PAGES 172 – 181
AND PAGES 4094 – 4101 OF REPORTER'S TRANSCRIPT)

JERRY BROWN, ATTORNEY GENERAL, STATE OF CALIFORNIA, 1300 I STREET, SUITE 1101,
SACRAMENTO, CA 942454-2550

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

---o0o---

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

VS

RICHARD WILLIAM HAMLIN,

Defendant.

COURT OF APPEAL
NO. C053982

EL DORADO COUNTY
NO. P04CRF0132 AND
P05CRF0161

---o0o---

CLERK'S TRANSCRIPT ON APPEAL

Appeal from the findings and orders of the Superior Court:

In and For the County of El Dorado

HONORABLE EDDIE T. KELLER, ASSISTANT PRESIDING JUDGE

---o0o---

A P P E A R A N C E S

For Appellant:

CENTRAL CALIFORNIA APPELLATE PROGRAM
2407 J Street, Suite 301
Sacramento, CA 95816

For Respondent:

JERRY BROWN, Attorney General
State of California
1300 I Street, Suite 1101
Sacramento, CA 94244-2550

Volume I of VIII Volumes
Page 1 through 299

CMS

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

---o0o---

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

VS

RICHARD WILLIAM HAMLIN,

Defendant.

COURT OF APPEAL
NO. C053982

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NO. P04CRF0132 AND
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A P P E A R A N C E S

For Appellant:

CENTRAL CALIFORNIA APPELLATE PROGRAM
2407 J Street, Suite 301
Sacramento, CA 95816

For Respondent:

JERRY BROWN, Attorney General
State of California
1300 I Street, Suite 1101
Sacramento, CA 94244-2550

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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THE PEOPLE OF THE STATE
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For Respondent:

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COURT OF APPEAL OF THE STATE OF CALIFORNIA
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THE PEOPLE OF THE STATE
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For Respondent:

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COURT OF APPEAL OF THE STATE OF CALIFORNIA
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THE PEOPLE OF THE STATE
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---o0o---

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For Appellant:

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2407 J Street, Suite 301
Sacramento, CA 95816

For Respondent:

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COURT OF APPEAL OF THE STATE OF CALIFORNIA
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OF CALIFORNIA,

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Sacramento, CA 95816

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COURT OF APPEAL OF THE STATE OF CALIFORNIA
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THE PEOPLE OF THE STATE
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COURT OF APPEAL
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EL DORADO COUNTY
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For Appellant:

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2407 J Street, Suite 301
Sacramento, CA 95816

For Respondent:

JERRY BROWN, Attorney General
State of California
1300 I Street, Suite 1101
Sacramento, CA 94244-2550

EL DORADO CO. SUPERIOR CT.

FILED JAN 29 2007

BY Lynn Cavin
Deputy

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CLERK'S TRANSCRIPT ON APPEAL

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THE PEOPLE OF THE
STATE OF CALIFORNIA
VS
RICHARD WILLIAM HAMLIN
EL DORADO CO. NO. P04CRF0132
AND P05CRF0161
COURT OF APPEAL NO. C053982

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THE PEOPLE OF THE
STATE OF CALIFORNIA
VS
RICHARD WILLIAM HAMLIN
EL DORADO CO. NO. P04CRF0132
AND P05CRF0161
COURT OF APPEAL NO. C053982

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THE PEOPLE OF THE
STATE OF CALIFORNIA
VS
RICHARD WILLIAM HAMLIN
EL DORADO CO. NO. P04CRF0132
AND P05CRF0161
COURT OF APPEAL NO. C053982

CHRONOLOGICAL INDEX

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THE PEOPLE OF THE
STATE OF CALIFORNIA
VS
RICHARD WILLIAM HAMLIN
EL DORADO CO. NO. P04CRF0132
AND P05CRF0161
COURT OF APPEAL NO. C053982

SCOTT CONCKLIN
Attorney at Law [105090]
2205 Hilltop Drive, No. PMB-116
Redding, California 96002
(530) 243-8510

ATTORNEY FOR APPELLANT

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

vs.

RICHARD WILLIAM HAMLIN,

Defendant and Appellant.

CASE NO.

DCA CASE NO. C053982

Sacramento County
Case No. P05CRF0161

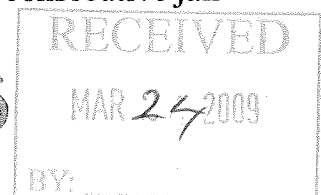
APPLICATION FOR LEAVE TO FILE OVERSIZE PETITION FOR
REVIEW

Appellant hereby requests leave of the court to file an oversized Petition for Review, which is submitted concurrently herewith. Said petition has a word count of 10,076 words. The reason for the oversize petition is as follows:

1. Extraordinary length and complexity of case.

The defendant was tried on a grand jury indictment on 17 counts, including torture, ADW, spousal battery, criminal threats, false imprisonment, and felony child abuse. He was convicted of torture, three counts of spousal battery, one count of criminal threat, and three counts of misdemeanor child endangerment. He received a life term for torture, stayed determine terms on the other felonies, and three consecutive jail terms on the three misdemeanors.

CMS



Several of the issues raised in this brief involve federal constitutional rights. In order to preserve federal constitutional issues for possible federal review, these issues were framed in federal constitutional terms, which necessitated a lengthier brief. For the reasons set forth herein, an oversize brief is necessary to fully present all of the issues involved in this appeal, and to present and preserve without waiver all arguable federal constitutional claims.

The record is extremely lengthy: CT = 1871 pages; RT = 4260 pages; Aug RT = 49 pages.)

The Court of Appeal granted leave to file an oversize brief, and Appellant's Opening Brief is 58,498 words in length and raised 17 issues.

The Court of Appeal decision is 101 pages and the modification is two pages.

2. Number and complexity of issues.

Ten issues for review are presented. The Petition for Review is 33 pages and 10,076 words in length.

3. Necessity to preserve federal constitutional issues.

Many of the issues raised in this petition involve federal constitutional rights. In order to preserve federal constitutional issues for possible future federal review, these issues were framed in federal constitutional terms, which necessitated lengthier briefing. For the reasons set forth above, an oversize brief is necessary to fully present all of the issues involved in this appeal, and to present and preserve without waiver all arguable federal constitutional claims. Accordingly, appellant respectfully requests leave to file the oversize brief submitted herewith.

DECLARATION OF COUNSEL

I, Scott Concklin, declare that I am counsel for appellant in the above captioned matter and I further declare as follows.

The factual matters set forth in this request are true and correct, to the best of my personal knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Respectfully submitted,

DATED:

SCOTT CONCKLIN
Attorney for Appellant

PROOF OF SERVICE BY MAIL
[CCP 1013a, 2015.5]

I declare that I am a resident of the County of Shasta, State of California. I am over the age of eighteen (18) years and I am not a party to the within entitled cause. My business address is: 2205 Hilltop Drive, No. PMB-116, Redding, California, 96002.

On the date of: 3/23/2009

I served the within copies, the exact title of which, are as follows:

APPLICATION FOR LEAVE TO FILE OVERSIZE PETITION FOR REVIEW

The name and address of the person(s) served, as shown on the sealed envelope with postage prepaid, and which was deposited in the United States mail at Redding, California, is a follows:

For Respondent

STATE ATTORNEY GENERAL
PO Box 944255
Sacramento, California 94224

CCAP
2407 J Street, Suite 301
Sacramento, California 94816

District Attorney
El Dorado County
515 Main Street
Placerville, California 95667

Superior Court
El Dorado County
495 Main Street
Placerville, California 95667

Appellant

Richard Hamlin
F49561
PVSP
PO BOX 8504
Coalinga, California, 93210

Clerk of the Court of Appeal
Third Appellate District
621 Capitol Mall, 10th Floor
Sacramento, California
95814-4719

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct, and that this declaration was executed in Redding, California
Date: 3/23/2009

Scott Concklin

This copy of the Court's opinion is to be filed with the Clerk of the Court and the Clerk of the Superior Court of El Dorado County.

CERTIFIED FOR PUBLICATION

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

FILED

MAR - 9 2009

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT

BY _____ Deputy

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD WILLIAM HAMLIN,

Defendant and Appellant.

C053982

(Super. Ct. No.
P05CRF0161)

MODIFICATION OF
OPINION AND DENIAL OF
PETITION FOR REHEARING

(NO CHANGE IN
JUDGMENT)

APPEAL from a judgment of the Superior Court of El Dorado County, Eddie T. Keller, Judge. Affirmed as modified.

Scott Concklin, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Stephen G. Herndon, Supervising Deputy Attorney General, Melissa Lipon, Deputy Attorney General, for Plaintiff and Respondent.

THE COURT:

The opinion of this court filed February 9, 2009, in the above entitled case is modified as follows:

RECEIVED

MAR 10 2009

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3/10/09 - copy
+ Juelse
Keller - SC

BY:

CMS

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

MAILING LIST

Re: The People v. Hamlin
C053982
El Dorado County
No. P05CRF0161

Copies of the attached document have been sent to the individuals checked below:

✓ Mellisa Lipon
Office of the State Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

Richard William Hamlin
CDC:F-49561 DOB:04/15/1960
Pleasant Valley State Prison
P.O. Box 8504
Coalinga, CA 93210

✓ Scott Concklin
Attorney at Law
PMB 116, 2205 Hilltop Drive
Redding, CA 96002

✓ Honorable Eddie T. Keller
Judge of the
El Dorado County Superior Court - Main
495 Main Street
Placerville, CA 95667

✓ Central California Appellate Program
2407 J Street, Suite 301
Sacramento, CA 95816

MAR 10 2009

S. GIL

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

vs.

RICHARD HAMLIN,

Defendant and Appellant.

CASE NO. C053982

**El Dorado County
Case No. P04CRF0132**

**APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT
COUNTY OF EL DORADO
THE HONORABLE EDDIE T. KELLER, JUDGE**

PETITION FOR REHEARING

TO JUDGE

NOTED:

PLEASE RETURN TO APPEALS DESK

SCOTT CONCKLIN [105090]

Attorney at Law

2205 Hilltop Drive, No. PMB-116

Redding, California 96002

(530) 243-8510

Attorney for Appellant

Appointed by the Court of Appeal

RECEIVED

FEB 24 2009

S. G. (55)

CMS

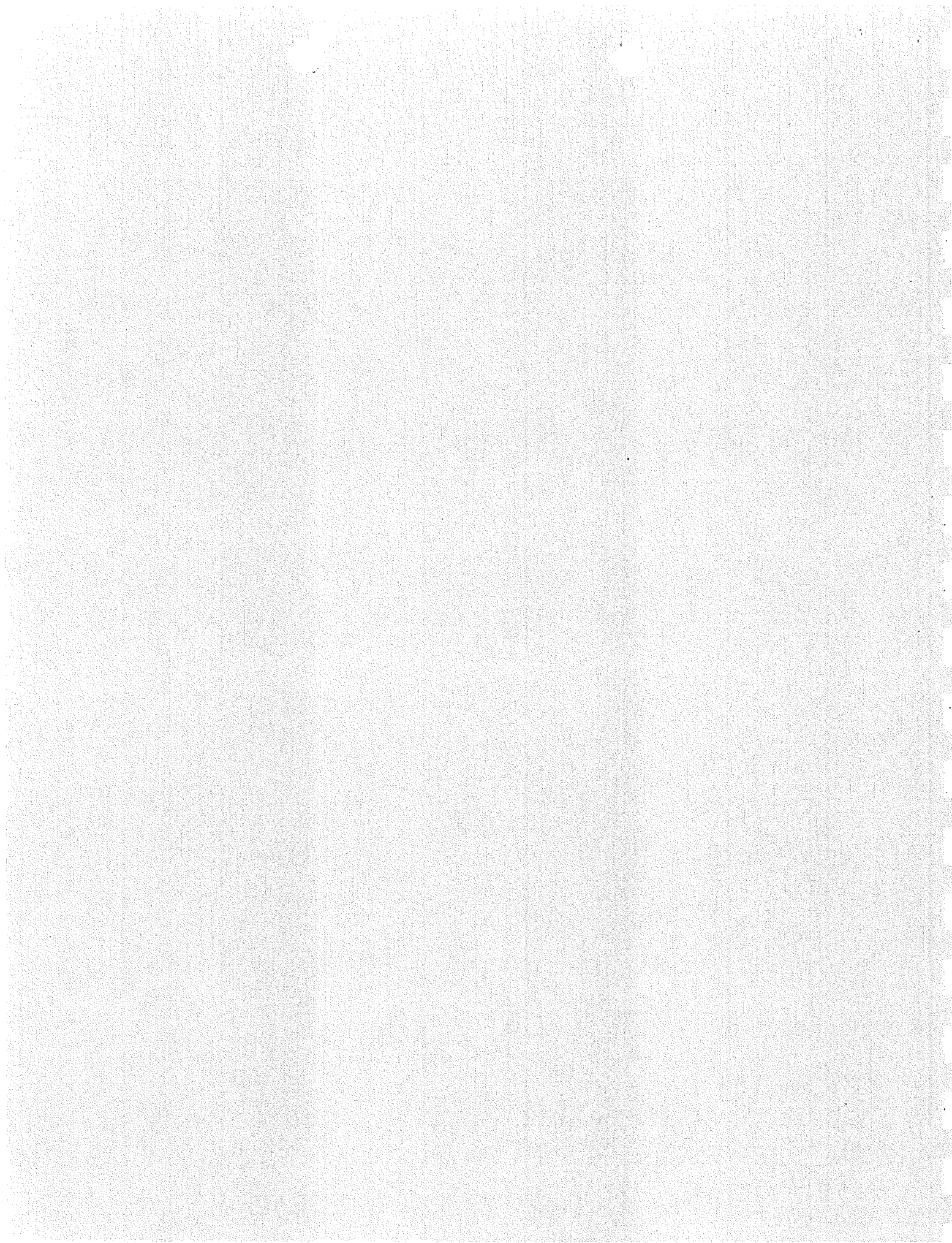


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(b) Susan's statement to police given when appellant was in the hospital.	4
(c) After appellant was jailed, Susan admitted to her friend that certain aspects of the cult story were true.	5
(d) Evidence supporting misdemeanor child abuse as to all three children.	6
(e) All of the evidence offered to support all counts, including counts that resulted in acquittal, should be summarized.	7
(f) Defense evidence including appellant's own testimony should be summarized.	8
2. SUFFICIENCY OF THE EVIDENCE OF TORTURE.	9
(a) Whether appellant's brief failed to affirmatively prove insufficient evidence.	9
(b) Whether torture is a continuous course of conduct offense.	12
(c) Whether the act inflicting great bodily injury must coincide with the requisite mental state.	13
3. UNANIMITY INSTRUCTION RE TORTURE.	14
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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

vs.

RICHARD HAMLIN,

Defendant and Appellant.

CASE NO. C053982

**El Dorado County
Case No. P04CRF0132**

PETITION FOR REHEARING

**TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE
JUSTICES OF THE COURT OF APPEAL, THIRD APPELLATE
DISTRICT:**

Appellant **RICHARD HAMLIN** respectfully requests a rehearing and reconsideration of the opinion filed in this case on **February 9, 2009** for the reasons that follow. The rehearing requested herein, if granted, could result in a different decision favorable to appellant.

1. INCOMPLETE STATEMENT OF FACTS.

A party who intends to file a Petition for Review must bring objections to the statement of facts in a Court of Appeal opinion by way of petition for rehearing. "A party may petition for review without petitioning for rehearing in the Court of Appeal, but as a policy matter the Supreme Court normally will accept the Court of Appeal opinion's statement of the issues and facts unless the party has called the Court of Appeal's attention to any alleged omission or misstatement of an issue or

fact in a petition for rehearing.” (Cal. Rules of Court, rule 8.500(c)(2); see also *People v. Cage* (2007.) 40 Cal.4th 965, 971, fn. 2.) Accordingly, appellant respectfully calls attention to the following omissions and/or misstatements of fact that appellant deems significant:

(a) Failure to adequately summarize Susan’s statement, to police February 26,

The opinion summarizes Susan’s statement to police as follows: “On February 26, 2004, defendant and S. went to the sheriff’s department and S. gave a detailed statement in which she admitted molesting her children. To explain the marks on her, she told the authorities Rock Clum had hit her.” (Slip Opinion, at p. 7.)

The opinion fails to adequately summarize the bizarre things that Susan told police in her statement, which included a confession of her involvement in Satanic child sexual abuse and a Satanic conspiracy to murder appellant. (See 5CT 1438-1490.)^{1/} Her statement was video taped, so there was no dispute over what she

¹ Susan claimed during the interview that her father was involved in a satanic cult in Fresno, and that she had been molested and raped by her father and other family member her entire life. (5CT 1446-1447.) In her youth, she was forced to watch snuff films which were used to intimidate her so that she would not tell anyone about what went on in her family. (5CT 1458.) She specifically recalled seeing a film in 1982, made by a cult member named Howard Milly, which showed him killing a ten year-old girl with dark hair. The killing took place in Indio, California, inside in an agricultural building with a brown sign with yellow lettering that read: Pochella Growers Association. (5CT 1458-1459.)

Susan told police that she once wanted to become a high priestess in the Satanic cult and had a plan to remove the existing high priestess (Martha Hicks) by going to the council with damaging information against her. When her father and Howard Milly found out about her plan, they thought it was too much trouble, so they had Martha Hicks killed instead. (5CT 1462-1463.)

Susan confessed to molesting (fondling genitals) three of her four children in their sleep between 1999 and October 2002, both in El Dorado County and in Fresno. (5CT 1456-1457, 1473-1474.) The fourth child was molested by members of her Fresno family. (5CT 1470.) The purpose, as she was taught, was to make them accustomed to being touched so that they would not resist the cult and to

said. Her strange statement to police is a fact essential to a proper understanding of the case, including many of the legal issues raise on appeal. For example, in several portions of the court's opinion, the court deems it unreasonable to believe that the jury would credit Susan's testimony in some aspects but reject it in others.^{2/} Her bizarre statement to police explains why a reasonable jury would

make them feel that their sexuality was not their own. (5CT 1453, 1472.)

She described a specific incident in Fresno when her father wanted to make a film of her molesting her son. He put the boy in a hypnotic trance and filmed Susan while she performed oral copulation. (5CT 1449, 1455.)

In October 2002, Susan accepted Christ and rejected Satan, and stopped molesting the children. (5CT 1480.)

She told detectives that the cult was planning on murdering her husband (appellant) on Sunday, March 1, at midnight. (5CT 1441-1443, 1477.) March 1st is a significant date for Satanists. (5CT 1445.) They wanted to kill appellant because he was a staunch Christian who would make a good trophy. (5CT 1446.) The satanic ring leaders in this plot were her father, Howard Milly and Richard Keehn. (5CT 1464.) Susan was supposed to go along with the plan, and her friend Lisa Clum was her local contact who would relay messages to her from her father. (5CT 1478.) The plan was to lure appellant out of his house by breaking a car window so that the killers could sneak into the house through the garage while appellant was outside. They would wait inside for him to return, and would kill him. (5CT 1444.)

Around February 2, Susan went to meet Lisa at a Starbuck's on Douglas Boulevard, but Lisa did not show. A man drove up instead, grabbed her by the arm, and told her that she had messed things up. She assumed it was Lisa's husband, Rock Clum. (5CT 1484-1486.) Later (a few days before February 26), Susan went to meet Lisa at an office park in El Dorado Hills to discuss the murder plan. (5CT 1444) The same man as before drove up in a red Lexus and punched her in the face, knocking her to the ground. He then kicked her in the head and body. He told her to stick with the plan or that she would be dead. (5CT 1445.) Susan received injuries to her face, ears, and body in the assault. (5CT 1487-1489.)

² For example: "Thus, the jury would have had to believe the part S.'s statement to police that Rock Clum beat her while at the same time disbelieving her statement to police that defendant never beat her. Because we are not persuaded a *reasonable* jury would have made these conflicting credibility determinations, we find no substantial evidence to support an instruction on attempted torture in this

find it difficult to give Susan complete credibility, even if jurors found her trial testimony somewhat believable. When her statement to police is properly considered, it is understandable why a jury would credit her testimony in some parts but not others.

The opinion omits the undisputed fact that Susan spoke to police in private, outside appellant's presence. The fact that it was given in private, outside of appellant's presence, makes it less likely that appellant coerced her to make the statement, and to include all of the details that she spoke of. Appellant claimed on appeal that the court should have given accomplice instructions for Susan because she participated in telling these sorts of upsetting stories about ritual satanic child abuse to her children. The court rejected the claim, noting that appellant's brief fails to cite evidence showing that her participation was not merely "assent" as opposed to "consent," but makes only an *ipse dixit* assertion in that regard. (Slip Opinion, at p. 68.) The fact that Susan told the police the same sort of story in private, outside of appellant's presence lends strong support to the claim that she was speaking on her own volition, and not by mere assent.

(b) Susan's statement to police given when appellant was in the hospital.

The opinion summarizes Susan's statement to police as follows: "After defendant was taken to the hospital, S. spoke with a detective and 'told him the story.'" (Slip Opinion, at p. 5.) The opinion fails to fully summarize "the story" that Susan told the officer while appellant was incapacitated in the hospital. The

case." (Slip Opinion, at p. 62.)

Also: "But to believe S. made false statements to law enforcement, the jurors would have had to believe S.'s trial testimony, because -- as defendant himself points out -- it was S. who testified at trial that her initial statements to law enforcement were false. In other words, to find S. was not credible pursuant to the omitted paragraph of CALJIC No. 2.20, the jury would have first had to find she was credible. (Slip Opinion, at p. 71.)

opinion states only that "the story" was that "Lisa Clum and her husband, Rock, as well as S., 'were all planning to kill [defendant]' and that 'that Rock Clum . . . had attacked [her] in Starbucks' parking lot.'" (Slip Opinion, at p. 5.) The more bizarre elements were omitted. Susan told the officer that Lisa and Rock Clum, who were involved with her father in a satanic cult, and her father was in competition for the position of high priest. (5CT 1425-1425.) The cult wanted Susan to take appellant to Fresno on February 2, 2004, where he would be killed as part of a satanic celebration. (5CT 1412.) Lisa Clum, a friend from high school who runs a prostitution ring, was in on the plot. (5CT 1425-1426.) Susan met with Lisa at Starbuck's the day before, and Lisa's husband got rough with Susan, bruising her arm. He was angry at her for screwing up the plan to take appellant to Fresno. (5CT 1414, 1430.) That was why appellant was suspicious of the Jehovah's Witness ladies who were at their door the next day. (5CT 1415.)

Because appellant was incapacitated in the hospital at the time Susan told the officer this "story," it is unreasonable to believe that she spoke only because she was afraid of appellant, or that she said those things only because of "assent," and not of her own volition.

(c) After appellant was jailed, Susan admitted to her friend that certain aspects of the cult story were true.

Ten days after appellant was arrested, Rita Haggerty called and asked Susan: "Susan, I just don't get it. Was all that stuff about the cult and your dad not true? Susan answered: "No, some of that was true." (9RT 1909, 2580.) This fact is relevant to the misdemeanor child abuse charges, which were based on a theory that appellant told children false stories that inflicted mental suffering. (See Slip Opinion, at p. 40 [stressing falsity of the stories].) This evidence shows that portions of the cult story were in fact true.

This evidence is also relevant on the issue of whether or not it would be reasonable for the jury to believe portions of Susan's story to police while rejecting other portions. (See Slip Opinion, at p. 62 [finding that no reasonable jury would make conflicting credibility determination as to Susan].) The fact that she herself told her friend (at a time when appellant was in jail and no longer a threat) that "the story" was true in parts gave the jury a reasonable basis to make conflicting credibility determinations.

(d) Evidence supporting misdemeanor child abuse as to all three children.

The court's opinion rejected appellant's constitutional challenge to the storytelling theory of misdemeanor child abuse, but failed to adequately summarize the testimony and statements of the three children themselves. (See AOB, at pp. 121-131 [summarizing children testimony].)

When a criminal conviction is based on speech, the reviewing court must conduct an independent review of the record to ensure that the speech in question is not constitutionally protected. (*In re George T.* (2004) 33 Cal.4th 620, 631-632, citing *Bose Corp. v. Consumers Union of U.S., Inc.* (1984) 466 U.S. 485, 514.) Because an independent review of the record is required, all of the evidence offered to support the crime should be summarized.

A full summary should include what was told to the children by their mother, because that goes to the issue of whether the stories were true or false. (See Slip Opinion, at p. 40 [stressing falsity of the stories].) One child claimed his mother specifically told him about Grandpa molesting Jenny Love, how he was in a cult and once gutted her puppy, and that he was plotting kill appellant. (4RT 871.) If false, the evidence that she told these upsetting stories to her children, knowing that them to be false supported, the claim that she was an accomplice.

A full summary should include the fact that one child wrote a kindergarten wish list that said he wished his mom would stop licking him. (5CT 1267.) The same child stated that he was regaining bad memories from a trip to Fresno in 2001, and could recall sitting on a couch crying and wondering why grandpa may have been undressing in front of him. (5CT 1270-1273, 1298.) That evidence goes to the issue of whether the stories were true or false.

A full summary should include the religious nature of the upsetting stories that appellant told to the children. One child believed that appellant was on a mission from God to oppose the satanic cult (3RT 743), and that Michael the Archangel and the devil were fighting in his mother's head. (5CT 1307.) The issue goes to appellant's First Amendment challenge to the storytelling child abuse theory.

(e) All of the evidence offered to support all counts, including counts that resulted in acquittal, should be summarized.

The opinion fails to summarize Susan's claims that did not result in a conviction. Counts 7 and 8 charged appellant with corporal injury to a spouse and false imprisonment on the weekend that Mark Steenberg came to visit. Susan testified that on Monday morning, appellant started hitting her in their bedroom. Susan ran to the door and cried out for help, Appellant grabbed her and dragged her back into the bedroom and shut the door. (5RT 1109-1100.) Appellant was acquitted on Counts 7 and 8. (6CT 1743-1746.)

Counts 10, 11, and 12 were based on Susan's claim that appellant assaulted her with a sword, slicing her finger, and then threatened her with a gun and forced her to sleep next to him at gunpoint. (5RT 1113-1119, 1578-1585.) Appellant was acquitted on these three counts. (6CT 1830-1832.)

These acquittals demonstrate that the jury did not believe Susan's testimony about the incidents, and may have found appellant's testimony more believable.

That demonstrates that the jury believed that the case involved a close credibility contest between the two, with neither side given full credit.

The fact that this jury did not believe Susan's testimony in total illustrates how it is reasonable to believe that this jury would accept some of her claims while rejecting other portions of her claims. (See Slip Opinion, at p. 62 [finding that no reasonable jury would make conflicting credibility determination as to Susan].)

(f) Defense evidence including appellant's own testimony should be summarized.

In rejecting appellant's constitutional challenge to the storytelling theory of child abuse, the court stressed that the falsity of the stories was a key consideration. (See Slip Opinion, at p. 40.) Because a constitutional challenge involves an independent review of the evidence (*In re George T.*, *supra*, 33 Cal.4th 620, 631-632), all of the evidence on the issue of truth or falsity should be summarized.

Appellant gave lengthy testimony in his own defense (see AOB, at pp. 28-37), which included explanations as to why he believed that the satanic cult stories were true and the evidence that convinced him that the stories were true. His version should be considered as part of an independent review of the evidence.

Jennifer Love testified that Susan's father did in fact molest her as a youth. She woke up during a sleepover to find him fondling her breasts. (14RT 2890-2893, 2898.) This shows that there was some truth to the story that grandpa was a child molester.

After appellant's arrest, on March 18, 2004, Susan was interviewed by a psychologist, Dr. David Stewart. (14RT 2878-2879.) She told the doctor that she had memory gaps from her childhood, and although she had insufficient memory to accuse her father of molesting her, she believed it was more likely than not that

she had been molested by her father as a child. (14RT 2881-2882.) She remembered one incident when she awoke to see her father fondling her girlfriend's breasts. (14RT 2881.)

A full summary of appellant trial testimony is also relevant to show how the jury viewed the case as a close credibility contest between appellant and Susan, with neither one deserving of full credibility. The fact that the jury acquitted appellant on several counts and convicted him on lesser charges only shows that this jury did not believe many of the things that Susan told them. Appellant relied on the close nature of the credibility contest to argue that various errors were not harmless. The court rejected those claims by characterizing appellant's assertion of a close credibility contest as perfunctory and *ipse dixit*. (Slip Opinion, at pp. 68, 70.) When one is mindful of the credibility conflict between Susan and appellant and how this jury found neither to be fully credible, the closeness of the credibility contest between the two is apparent.

2. SUFFICIENCY OF THE EVIDENCE OF TORTURE.

(a) Whether appellant's brief failed to affirmatively prove insufficient evidence.

The court's decision suggests that appellant's challenge to the sufficiency of the evidence as to the mental element of torture was deficient because it merely asserted that "there was no evidence," which fails to affirmatively demonstrate the lack of evidence. (Slip Opinion, at p. 17, citing *People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) In *Sanghera*, the court explained how lack of evidence can be affirmatively demonstrated:

"[T]o prevail on a sufficiency of the evidence argument, the defendant must present his case to us consistently with the substantial evidence standard of review. That is, the defendant must set forth in his opening brief *all* of the material evidence on the

disputed elements of the crime in the light most favorable to the People, and then must persuade us that evidence cannot reasonably support the jury's verdict. (See *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282 [188 Cal.Rptr. 123].) If the defendant fails to present us with all the relevant evidence, or fails to present that evidence in the light most favorable to the People, then he cannot carry his burden of showing the evidence was insufficient because support for the jury's verdict may lie in the evidence he ignores." (*Id.* at p. 1573.)

Appellant respectfully requests rehearing and reconsideration on this point. *Sanghera* instructs that an appellant challenging the sufficiency of the evidence on appeal should set forth all of the material evidence in the *opening brief*. Appellant did so. Appellant's opening brief included a detailed statement of facts that summarized all of the prosecution evidence at trial. (See AOB, pp 5-28.) It also included a lengthy summary of defense evidence (AOB, at pp. 28-39), followed by a summary of the People's rebuttal evidence. (AOB, at pp. 39-40). This detailed and all-inclusive presentation of all relevant evidence at trial supported appellant's claim that there was insufficient evidence to support a conviction for torture.

The challenge to the sufficiency of the evidence (Issue III) consumed eight pages of the opening brief. (AOB, at pp. 59-67.) The evidence was again summarized (AOB, at pp. 59-60). Appellant argued that the an intent to torture should require an intent to inflict pain beyond the pain of felony assault and battery. (AOB, at p. 64, citing *People v. Raley* (1992) 2 Cal.4th 870, 889 [torture-murder requires "proof of intent to cause pain and suffering beyond the pain of death"].) Appellant then discussed the various incidents of violence alleged against appellant to argue that the evidence was insufficient to show an intent to inflict such a high level of pain. (AOB, at pp. 65-66.)

It was unfair to characterize this presentation as a mere assertion that “there was no evidence.” (Slip Opinion, at p. 17.) The decision quotes portions of appellant’s *reply brief* to demonstrate how appellant violated *Sanghera*:

Defendant contends S.’s “generic claim that he would hit her in sore ribs and target already broken bones” will not support his torture conviction because “there was no evidence that he knew that she had sore ribs and already broken bones when he did these generic acts.” Later, he complains that the People “do[] not cite substantial evidence to show that [he] had that knowledge.”

Defendant’s argument misapprehends the burden imposed on a defendant who challenges the sufficiency of the evidence. It is not enough for defendant to simply say “there was no evidence”; instead, “he must affirmatively demonstrate that the evidence is insufficient” on the point in dispute. (*People v. Sanghera, supra*, 139 Cal.App.4th at p. 1573.) For the same reason, defendant’s complaint that the People have not cited substantial evidence misses the point. The People do not bear the burden of showing the conviction is supported by substantial evidence; instead, because “we must begin with the presumption that the evidence . . . was sufficient,” it is defendant, as the appellant, who “bears the burden of convincing us otherwise.” (*Ibid.*) (Slip Opinion, at pp. 17-18.)

Sanghera addresses how to properly challenge the sufficiency of the evidence in an opening brief. Appellant made an affirmative argument to demonstrate lack of sufficient evidence in his opening brief, without attempting to shift the burden to the People. The comments about the People’s failure to cite substantial evidence were made in Appellant’s Reply Brief. It was fair to comment in the Reply Brief on the People’s failure to cite specific evidence to counter appellant’s arguments. (See e.g., *People v. Johnwell* (2004) 121 Cal.App.4th 1267, 1278 [‘The People have not made the slightest attempt to meet this standard, an omission we view as a tacit concession they cannot do so.’].)

Because the court’s opinion suggests that the sufficiency of the evidence claim was decided against appellant based on deficiencies in the presentation of the

claim rather than upon the merits, appellant respectfully seeks rehearing and reconsideration of his claim on the merits.

(b) Whether torture is a continuous course of conduct offense.

Appellant requests rehearing to reconsider the issue of whether torture is a continuous conduct offense. A person is guilty of torture if he “inflicts great bodily injury” with the requisite mental state. (Pen. Code § 206.) The decision of this court rejected appellant’s argument that the verb “to inflict” means a discrete act of violence rather than a continuous course of conduct:

Here, defendant argues that the operative language of section 206 -- specifically, the word “inflicts” -- does not denote conduct that can occur over a period of time. He contends “[i]nfliction of injury normally occurs as the result of a violent act” and “[t]he infliction of great bodily injury is not a gradual or continuous process. It is a discrete criminal event.”

Defendant’s argument is contradicted by the plain meaning of the word “inflict,” which includes “to cause (something unpleasant) to be endured.” (Merriam-Webster’s Collegiate Dict. (11th ed. 2006) p. 641 col. 1.) Obviously a person can be forced to endure something unpleasant over a period of time. Indeed, anyone who has visited a chamber of horrors in a wax museum can conjure up any number of classic instruments of torture -- such as the rack -- that are specifically designed to inflict pain and injury over an extended period of time. (Slip Opinion, at p. 13.)

This explanation does not apply to the torture statute because the verb “to inflict” is not in reference to the infliction of suffering, but refers instead to the infliction of great bodily injury. Although suffering can continue over an extended period of time, the crime of torture is not defined as the infliction of suffering. Instead, the *actus reus* of torture is the infliction of great bodily injury. The infliction of great bodily injury normally occurs as the result of an injurious act that occurs at a moment in time rather than over a period of time.

(c) Whether the act inflicting great bodily injury must coincide with the requisite mental state.

Appellant respectfully requests rehearing and reconsideration of the following:

“Defendant’s argument presumes that each act of violence he committed on S. must be analyzed separately to determine if there was evidence that particular act was committed with the intent to cause severe pain and evidence that particular act resulted in great bodily injury. This is incorrect. Where, as here, torture is charged and tried as a course of conduct crime, such analysis is unnecessary. The question for the jury was not whether S. suffered great bodily injury from a particular act defendant committed on a particular day with the intent to cause her severe pain. Rather, the question was whether, with that intent, defendant engaged in a course of conduct toward S. that resulted in great bodily injury. As long as the jury could reasonably find that defendant had the requisite intent when he engaged in the course of conduct, and that the course of conduct resulted in great bodily injury, then the evidence is sufficient to support a torture conviction.” (Slip Opinion, at p. 19.)

The foregoing suggests that when torture is prosecuted on a continuing course of conduct theory, there is no need for a union or joint operation of act or conduct and specific intent. If so, a defendant can be convicted of torture if he or she has the requisite intent on one day and does an act to inflict great bodily injury on another day, without joint operation of act and specific intent.

The jury was instructed that torture requires that (1) “[a] person inflicted great bodily injury upon the person of another” and (2) “[t]he person inflicting the injury did so with [the requisite] specific intent...” (CT 1781.) The jury was also instructed that “there must exist a union or joint operation of act or conduct and a certain specific intent in the mind of the perpetrator.” (RT 1799.)

“Every crime requires a union of an act and a criminal mental state.” (*People v. Morales* (2001) 25 Cal.4th 34, 45, citing Pen. Code, § 20.) Penal Code section 20, which provides that “[i]n every crime or public offense there must exist a

union, or joint operation of act and intent, or criminal negligence,” codifies a “fundamental doctrine of criminal law.” (*People v. Green* (1980) 27 Cal.3d 1, 53.) “So basic is the requirement [of a union of act and wrongful intent] that it is an invariable element of every crime unless excluded expressly or by necessary implication.” (*People v. Tassell* (1984) 36 Cal.3d 77, 93 [bracketed language not added].)

Appellant’s argument presumes that each act of violence committed against Susan “must be analyzed separately to determine if there was evidence that particular act was committed with the intent to cause severe pain and evidence that particular act resulted in great bodily injury,” because the law requires a union or joint operation of act and specific intent. Unless the act that causes the harm is committed with the requisite specific intent in the mind of the perpetrator at the time of the criminal act, the specific intent crime has not been committed.

3. UNANIMITY INSTRUCTION RE TORTURE.

In rejecting appellant argument that the jury should have received a unanimity instruction for the crime of torture, the court applied *People v. Sanchez* (2001) 94 Cal.App.4th 622 which found that Penal Code section 597 dealing with cruelty to animals was a continuing course of conduct offense:

This court rejected a similar argument in *Sanchez*. Although a unanimity instruction was required in *Sanchez* on the animal abuse charge that was based on evidence of two discrete instances when the defendant allegedly kicked a dog, the court concluded no unanimity instruction was required on other animal abuse charges that were based on evidence the defendant “failed to provide adequate food and water for [certain] animals on an ongoing basis” and “failed to provide any medical treatment for a puppy that was severely wounded.” (*People v. Sanchez, supra*, 94 Cal.App.4th at p. 634.) The defendant argued a unanimity instruction was required on those charges “because the prosecution distinguished between

various incidents of animal abuse,” but this court rejected that argument because it was “based on a misunderstanding of a continuous-course-of-conduct offense. By its very nature, [such an offense] is established by proof that the conduct took place repeatedly throughout the charged period of time.” (*Id.* at p. 635.) Thus, proof of a course of conduct offense will usually consist of evidence of various incidents occurring over a period of time. However, where those incidents can reasonably be found to constitute a course of conduct, and the prosecution charges the crime as a course of conduct, no unanimity instruction is required. In such a case, “the multiple acts constitute one discrete criminal event.” (*People v. Sanchez, supra*, 94 Cal.App.4th at p. 631.)

Because that was the case here with the charge of torture, the trial court did not err in failing to give a unanimity instruction on that charge. (Slip Opinion, at pp. 53-54.)

In *Sanchez*, the court found that the statute could be violated either by discrete criminal acts or by a continuing course of conduct. It is a continuing course of conduct offense when the animal suffers due to nonfeasance, where the owner fails to properly care for the animal. “When a violation of the subdivision is committed by failing to provide food, water, and shelter to an animal, it is necessarily a continuing offense and a unanimity instruction is not required.” (*Id.* at p. 633.) But “while animal cruelty may be committed by a continuous course of conduct, it may also be committed by a single act of abuse such as by kicking or beating an animal.” (*Id.* at p. 634.)

Appellant respectfully requests rehearing and reconsideration on the unanimity instruction issue. A *Sanchez* analysis supports his claim. There was no claim that appellant inflicted great bodily injury on Susan by nonfeasance or neglect over time, or by failing to properly care for her in a continuous manner, the same way that a person can be convicted for failing to care of an animal or a child. It was claimed that he committed different acts of violence against her on different occasions over a period of time. That is more akin to the discrete “kicking and

beating” aspect of the offense that required unanimity in *Sanchez*, rather than the continuous “failure to provide” aspect of the offense.

4. LESSER INCLUDED OFFENSES TO TORTURE.

1. Courts should not evaluate credibility in determining whether substantial evidence supports instruction on lesser included offenses.

The opinion found no *sua sponte* duty to instruct on attempted torture as a lesser included offense to torture because there was no “evidence that a reasonable jury could find persuasive” on the point. (Slip Opinion, at p. 61, citing *People v. Barton* (1995) 12 Cal.4th 186, 201, fn. 8.) The court explained:

For a *sua sponte* instruction on attempt to be required, however, there must be “evidence that a reasonable jury could find persuasive” on the point. (*People v. Barton* (1995) 12 Cal.4th 186, 201, fn. 8.)

The evidence on which defendant relies is not such evidence. Essentially, the jury would have had to believe S.’s testimony that defendant hit her to persuade her to go along with his story about the molestation and the satanic cult, but at the same time believed that S.’s broken bones and other physical injuries were not caused by defendant’s beatings but had other causes. Most significantly, to accept defendant’s argument, the jury would have had to believe S.’s statement to police that a man she assumed was Rock Clum beat her. But at the same time S. made this statement to police, she told police that defendant never beat her. Thus, the jury would have had to believe the part S.’s statement to police that Rock Clum beat her while at the same time disbelieving her statement to police that defendant never beat her. Because we are not persuaded a reasonable jury would have made these conflicting credibility determinations, we find no substantial evidence to support an instruction on attempted torture in this case. (Slip Opinion, at p. 62.)

Appellant respectfully requests rehearing and reconsideration of this point. “In deciding whether there is substantial evidence of a lesser offense, courts should not evaluate the credibility of witnesses, a task for the jury.” (*People v. Breverman* (1998) 19 Cal.4th 142, 162.) “A trial court should not, however, measure the

substantiality of the evidence by undertaking to weigh the credibility of the witnesses, a task exclusively relegated to the jury.” (*People v. Flannel* (1979) 25 Cal.3d 668, 684.)

In exercising its factfinding function, the jury was entitled to believe part of a witnesses testimony while rejecting others. Evidence supporting a theory does not become legally insubstantial just because the jury may have to believe a witnesses testimony in part, while rejecting other portions of the testimony. “No authority [supports the] contention that the jury may not accept one portion of a witness's testimony while rejecting another. The authorities are to the contrary.” (*People v. Robinson* (1964) 61 Cal.2d 373, 389.)

It would not be unreasonable for jurors to credit Susan’s statement to police in part while rejecting other portions of it. The bizarre story she told to police about her father’s participation in a satanic cult gave jurors a reason to question her credibility. But that does not mean that jurors were required to reject all of it. Reasonable jurors could believe that some portions were true and other portions were untrue. After all, Susan herself told her friend that “some of that was true.” (9RT 1909, 2580.)

The mixed verdict shows that this jury did in fact believe Susan only in part, and rejected her assertions in other parts. Appellant was acquitted outright of the Steenberg Weekend charges (Counts 7 & 8) and the sword play incident (Counts 10, 11, & 12.) That shows that the jury did not believe Susan’s allegations concerning those incidents.

Appellant was convicted on other offenses, but the jury did not believe Susan when she claimed that she suffered great bodily injury in those incidents. Susan claimed, for example, that she suffered a broken nose as a result of the laundry room incident (Counts 17 and 18). Appellant was acquitted of assault by means of

force likely to produce great bodily injury and convicted of spousal abuse, but the great bodily injury allegation was found untrue. (See CT 1835-1836.) The same is true for the Superbowl Sunday “rib breaking incident” (Count 9) where appellant was convicted of an act of violence, but the GBI allegation was found untrue. That shows that jurors believed that appellant was violent with Susan on those occasions, but not so much that he inflicted great bodily injury.

Under those circumstances, there was a reasonable basis to conclude that the jury did not give full credit to either appellant or Susan. Thus, there was substantial evidence for the jury to find that appellant may not have succeeded in inflicting great bodily injury, and was guilty of only attempted torture as a lesser included offense.

2. Because proximate cause is required for torture, assault by force likely to produce great bodily injury is a lesser included offense to torture.

The court found that assault by means of force likely to produce great bodily injury is not a lesser included offense to torture because one can be guilty of torture by means of force that is *unlikely* to produce great bodily injury:

Torture requires actual infliction of great bodily injury, but the means of force used to inflict that injury is not an element of the crime. It is possible for a person to commit torture -- i.e., to inflict great bodily injury with the requisite intent and purpose -- by means of force that is not likely to produce great bodily injury, but nonetheless ends up doing so. Thus, torture can be committed without also committing assault by means of force likely to produce great bodily injury, and therefore the latter crime is not a lesser included offense of the former. (Slip Opinion, at p. 63.)

Appellant respectfully requests rehearing and reconsideration of this point. Torture cannot be inflicted “by means of force that is not likely to produce great bodily injury” because without a likelihood of injury, it cannot be said that the defendant’s act was the proximate cause of the injury.

“The principles of causation apply to crimes as well as torts. [Citation.] ‘Just as in tort law, the defendant’s act must be the legally responsible cause (‘proximate cause’) of the injury, death or other harm which constitutes the crime.’” (*People v. Brady* (2005) 129 Cal.App.4th 1314, 1334; *People v. Schmies* (1996) 44 Cal.App.4th 38, 46-47.) “The state has the burden of proving proximate cause as it has the burden of proving every material element of a crime.” (*People v. Scola* (1976) 56 Cal.App.3d 723, 726; *People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590-591.) Thus, the crime of torture must be construed as having an element of proximate cause.

“Proximate cause” is defined as a ‘direct, natural and probable consequence’ of an act.” (*People v. Brady, supra*, 129 Cal.App.4th 1314, 1334, citing CALJIC No. 3.40.) “[F]or liability to be found, the cause of the harm not only must be direct, but also not so remote as to fail to constitute the natural and probable consequence of the defendant’s act.” (*People v. Roberts* (1992) 2 Cal.4th 271, 319.)

A natural and probable consequence is a likely consequence. Thus, the element of ADW that requires force likely to produce great bodily injury means force that would naturally and probably produce great bodily injury. (*People v. Smith* (1997) 57 Cal.App.4th 1470, 1480-1484.) “[T]he criminal intent which is required for assault with a deadly weapon ... is the general intent to willfully commit an act the direct, natural and probable consequences of which if successfully completed would be the injury to another.” (*Id.* at p. 1982.) “[T]he mental state for assault incorporates the language of probability, *i.e.*, direct, natural and probable consequences.” (*People v. Williams* (2001) 26 Cal.4th 779, 787.)

The element of ADW requiring “force likely to produce great bodily injury” means that same thing as proximate cause. Both are defined in terms of “direct, natural and probable consequences.” Because the crime of torture requires an act

that is the proximate cause of great bodily injury, and because proximate cause is defined as the “direct, natural and probable consequence” of an act, one cannot commit the crime of torture without also committing assault with force likely to produce great bodily injury.

4. STATUTE OF LIMITATIONS RE MISDEMEANOR CHILD ABUSE.

Is the “same conduct” tolling provision a question of fact for the jury to decide or is a question of law for the court to decide?

Although the three counts of misdemeanor child abuse were facially time-barred by the one-years statute of limitations, this court found that the limitation period was tolled by the fact that a prior prosecution was for the “same conduct.” (Pen. Code, § 803.) The court found that the prior prosecution was based on a theory that appellant inflicted indirect abuse by inflicting spousal abuse on Susan in view of the children. Appellant was convicted on a theory that he told the children upsetting stories. This court determined as a matter of law that both theories were for the “same conduct.” (Slip Opinion, at pp. 31-38.)

Appellant’s Sixth Amendment challenge was not addressed. “An accusatory pleading must allege facts showing that the prosecution is not barred by the statute of limitations.” (*People v. Crosby* (1962) 58 Cal.2d 713, 724.) A failure to allege facts that would toll the statute of limitations is fatal to the validity of a conviction obtained upon such defective pleading. (*In re Demillo* (1975) 14 Cal.3d 598, 601-602.) As appellant argued in his opening brief, the statute of limitation defense is a *substantive* defense that is tried to the jury. Under *Apprendi*, whether or not facts exist to toll the statute of limitations is a question of fact that only a jury can decide.^{3/}

³ As stated in Appellant’s Opening Brief: “Under California law, the statute of limitations is a *substantive* defense. (*Cowan v. Superior Court* (1996) 14 Cal.4th

Here, because the People failed to plead and prove facts which would toll the statute of limitations, the three misdemeanor offenses were facially time-barred, and appellant was entitled to an acquittal. For a reviewing court to engage in fact-finding to supply facts essential for a conviction on a substantive issue is a violation of the Sixth Amendment right to jury trial.

Appellant respectfully requests rehearing for reconsideration of appellant's Sixth Amendment challenge in that regard.

5. ACCOMPLICE INSTRUCTIONS.

Appellant was convicted of child abuse based on a theory that he told his children upsetting stories. Because there was ample evidence that Susan told the children the same stories, there was sufficient evidence that Susan was an accomplice within the meaning of Penal Code section 1111.

The court's opinion rejects appellant's claim of error, but it is unclear whether the claim was denied on the merits or whether it was denied because the assent vs. consent issue was not adequately briefed. (Slip Opinion, at pp. 67-68.) Appellant requests rehearing and reconsideration so that the issue can be properly considered on the merits.

367, 371-372.) As such, a defendant has a right to a jury trial on limitation issues. (*People v. Zamora* (1976) 18 Cal.3d 538, 564, fn. 25.) It has been termed by the United States Supreme Court as a "complete defense." (*Stogner v. California* (2003) 539 U.S. 607, 632.) The substantive nature of the defense creates a Sixth Amendment right to a jury trial on the limitation issue. The statute of limitations is a defense which, if sustained, constitutes an acquittal on the merits. (*United States v. Oppenheimer* (1916) 242 U.S. 85, 88; also *Plaut v. Spendthrift Farm, Inc.* (1995) 514 U.S. 211, 228 [dismissal based on statute of limitations considered a judgment on the merits]; *People v. King* (2002) 27 Cal.4th 29, 31 [California Supreme Court follows *Plaut*].) Since it is a substantive issue which can spell the difference between conviction and acquittal, a criminal defendant should have a federal constitutional right to a jury determination of the issue. (*Apprendi v. New Jersey* (2000) 530 U.S. 466.)" (AOB, at pp. 145-146.)

In Appellant's Opening Brief, appellant argued that there was undisputed evidence that Susan participated in the same storytelling that was charged against appellant. It was acknowledged, however, that Susan claimed that appellant forced to tell these stories, which raised a question whether she participated by assent or consent. (AOB, at pp. 150-151.)

Appellant cited and relied on *People v. Valdez* (2002) 27 Cal.4th 778, the California Supreme Court held that a mother can be held liable for felony child endangerment for failing to protect the child from a dangerous boyfriend. In *People v. Felton* (2004) 122 Cal.App.4th 260, the court applied *Valdez* to find that the court should have given accomplice instructions. Appellant argued that Susan was guilty of child endangerment on the same theory. "[N]ot only did Susan fail to protect the children from abuse (hearing upsetting stories), there is no doubt that Susan actively participated in the same storytelling that was charged against appellant. The children indicated that they heard stories from both parents. Sometimes Susan would confirm what appellant was telling them by adoptive admission, *i.e.*, by nodding or agreeing, or by failing to object. Other times she would tell them these things herself. She could thus be charged with inflicting mental suffering on the children upon the same storytelling theory, and in the exact same manner, as charged against appellant." (AOB, at p. 150.)

Valdez and *Fenton* stand for the proposition that a mother has an independent duty to protect their children from abusive fathers and boyfriends, and are guilty of child endangerment when they fail to do so. Because of that affirmative duty, a mother cannot escape liability by claiming that her abusive spouse forced her to participate in the abuse, and that she participated only because of assent rather than consent. Appellant requests rehearing for reconsideration on the issue of

whether a parent can escape liability for failing to protect his or her children by blaming an abusive partner.

6. CALJIC NO. 2.20.

Appellant requests rehearing and reconsideration on the issue of whether the trial court erred prejudicially in failing to instruct that evidence of Susan's crime of moral turpitude (falsely reporting crime to police in violation of Pen. Code, § 148.5) could be considered in derogation of her credibility.

The court found the error harmless because due to the following conundrum: "to believe S. made false statements to law enforcement, the jurors would have had to believe S.'s trial testimony, because -- as defendant himself points out -- it was S. who testified at trial that her initial statements to law enforcement were false. In other words, to find S. was not credible pursuant to the omitted paragraph of CALJIC No. 2.20, the jury would have first had to find she was credible. No valid claim of prejudicial error can rest on such a contradiction." (Slip Opinion, at p. 71.) Appellant requests rehearing and reconsideration of this point.

Susan admitted that she committed a crime of moral turpitude. She falsely reported her own father and her close friend to police, accusing them of horrible sex crimes and conspiracy to commit murder. That was a declaration against penal interest. The fact that she admitted telling horrible lies against her father and her friend (and blamed appellant by way of excuse) does make her a credible person.

A declaration against penal interest is deemed credible not because the person who admits a crime is honest, but because even dishonest people are reluctant to admit crimes. "The United States Supreme Court observed that the declaration-against- penal-interest 'exception to the hearsay rule is 'founded on the commonsense notion that reasonable people, even reasonable *people who are not*

especially honest, tend not to make self-inculpatory statements unless they believe them to be true.' [Citation.] However, this reasoning only applies to declarations within a confession that are individually self-incriminatory and not to statements that are collateral to them. 'The fact that a person is making a broadly self-inculpatory confession does not make more credible the confession's non-self-inculpatory parts. One of the most effective ways to lie is to mix falsehood with truth, especially truth that seems particularly persuasive because of its self-inculpatory nature.' " (*People v. Garcia* (2008) 168 Cal.App.4th 261, 289, fn. 17, emphasis added, citing *People v. Greenberger* (1997) 58 Cal.App.4th 298, 328-329, quoting *Williamson v. United States* (1994) 512 U.S. 594, 599-600.)

It would not be contradictory for the jury to consider the fact that Susan admitted telling horrible lies about her friend and father in derogation of her credibility. An admitted liar is generally considered to be a dishonest person unworthy of trust. The fact that person is willing to admit to telling damaging lies about others does not make the admitted liar an honest persons.

7. CONDUCT CREDIT LIMITATION APPLIED TO JAIL TERM.

Appellant argued that the 15% limit of Penal Code section 2933.1 should not have been applied to fully-served jail terms because section 2933.1 applies only to limit conduct credits that are applied to reduce a prison term. (AOB, at pp. 178-180.)

The claim was rejected because: "There is nothing in the statute that restricts application of the 15 percent limit when some portion of the presentence jail time will ultimately be applied to satisfy jail terms on misdemeanor convictions sentenced contemporaneously with the felony conviction that triggers the application of section 2933.1." (Slip Opinion, at pp. 99-100.)

Appellant respectfully requests rehearing and reconsideration on this point. Penal Code section 2933.1 appears in Article 2.5 of Chapter 7 of Title 1 of Part 3, which deals with prison credits. “[A] person who spends time in presentence (including pretrial) confinement and is eventually convicted of a violent offense may earn, as a credit against his prison sentence, no more than 15 percent of the actual time he spent in presentence confinement, regardless of the offenses for which he was charged.” (*In re Reeves* (2005) 35 Cal.4th 765, 774.)

The 15% limitation on conduct credit that can be applied to a prison term controls even when there the sentence includes offenses that do not qualify for the limitation. This is so, as explained in *Reeves*, because under the determinate sentencing law, the various components of a sentence merge into one single aggregate prison sentence. (*Id.*, at pp. 772-774.)

Here, the misdemeanor jail sentences were fully served before the prison sentence was imposed. Consequently, those jail sentences were served separately, and did not merge with the prison sentence that was imposed for the violent felony.

CONCLUSION.

For the reasons herein stated, appellant respectfully requests that this petition for rehearing be granted.

Dated:

Scott Concklin
Attorney for Appellant

WORD COUNT CERTIFICATION

The computer word processing program that produced this document returned a word count of 8288 words.

I declare under penalty of perjury of the law of the State of California that the foregoing is true and correct.

Dated: 3/19/07

Scott Concklin

PROOF OF SERVICE BY MAIL
[CCP 1013a, 2015.5]

I declare that I am a resident of the County of Shasta, State of California. I am over the age of eighteen (18) years and I am not a party to the within entitled cause. My business address is: 2205 Hilltop Drive, No. PMB-116, Redding, California, 96002.

On the date of: 2/23/2009

I served the within copies, the exact title of which, are as follows:

PETITION FOR REHEARING

The name and address of the person(s) served, as shown on the sealed envelope with postage prepaid, and which was deposited in the United States mail at Redding, California, is a follows:

For Respondent

STATE ATTORNEY GENERAL
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Sacramento, California 94224

CCAP
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District Attorney
El Dorado County
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Placerville, California 95667

Superior Court
El Dorado County
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Placerville, California 95667

Appellant

Richard Hamlin
F49561
PVSP
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Coalinga, California, 93210

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct, and that this declaration was executed in Redding, California
Date: 2/23/2009

Scott Concklin

100

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

FILED

FEB - 9 2009

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT

BY _____ Deputy

THE PEOPLE,
Plaintiff and Respondent,
V.
RICHARD WILLIAM HAMLIN,
Defendant and Appellant.

C053982
El Dorado County
No. P05CRF0161

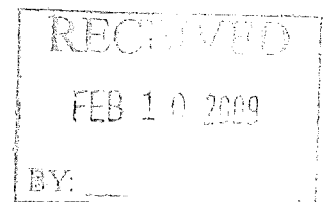
BY THE COURT:

As no request for oral argument was received within the time provided,
the court approves the waiver, and the cause is ordered submitted. The enclosed
opinion is a true and correct copy of the original opinion entered in the above cause.

Dated: February 09, 2009

SCOTLAND, P.J.

cc: See Mailing List



CMS

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

MAILING LIST

Re: The People v. Hamlin
C053982
El Dorado County
No. P05CRF0161

Copies of the attached document have been sent to the individuals checked below:

✓ Mellisa Lipon
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Richard William Hamlin
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✓ Scott Concklin
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✓ Honorable Eddie T. Keller
Judge of the
El Dorado County Superior Court - Main
495 Main Street
Placerville, CA 95667

✓ Central California Appellate Program
2407 J Street, Suite 301
Sacramento, CA 95816

This copy of the decision has been forwarded to the trial judge before the expiration of the time for filing a petition for writ of habeas corpus or a petition for a writ of certiorari, and it is to be treated as a final decision on appeal.

CERTIFIED FOR PUBLICATION

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD WILLIAM HAMLIN,

Defendant and Appellant.

C053982

(Super. Ct. No. P05CRF0161)

FILED

FEB - 9 2009

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT

BY _____ Deputy

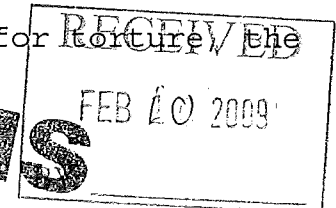
APPEAL from a judgment of the Superior Court of El Dorado County, Eddie T. Keller, Judge. Affirmed as modified.

Scott Concklin, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Stephen G. Herndon, Supervising Deputy Attorney General, Melissa Lipon, Deputy Attorney General, for Plaintiff and Respondent.

A jury found defendant Richard Hamlin guilty of torture, making a criminal threat, three counts of inflicting corporal injury on his wife, and three counts of misdemeanor child abuse.

The trial court sentenced him to life in prison for torture.



2/10/09 - copy to Judge Keller - R

upper term of three years for making a criminal threat, and the upper term of four years for each of the three counts of inflicting corporal injury, but the court ordered the terms on the latter four counts stayed pursuant to Penal Code¹ section 654. The court also sentenced defendant to three consecutive terms of 180 days each for the child abuse counts.

On appeal, defendant raises numerous issues, including claims of insufficiency of the evidence, evidentiary errors, instructional errors, error in denying his new trial motion, and sentencing errors.

We reject defendant's challenges to the sufficiency of the evidence and most of his claims of error, with two exceptions: we conclude (1) the trial court erred in imposing upper terms on defendant's convictions for making a criminal threat and inflicting corporal injury on a spouse based on facts not found to exist by the jury, admitted by defendant, or justified based on defendant's record of prior convictions; and (2) the trial court erred in imposing a no-contact order on defendant. Accordingly, we will strike the no-contact order and remand the case to the trial court for resentencing. With these exceptions, defendant's convictions are affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant and his wife, S., lived with their four children in El Dorado Hills. Sometime after 1999, defendant -- who

¹ All further statutory references are to the Penal Code unless otherwise indicated.

worked as a criminal defense attorney -- began to physically abuse S. By 2003, the abuse escalated. According to S., defendant eventually abused her physically "on a daily basis, more than once a day." "He would strangle [her]. He would hit [her] in the head. He would throw [her] into furniture. He would hold [a] gun to [her] head. He would use a knife and push and just gradually increase the pressure and see how long he could push before he would break the skin" "He would hold lit cigarettes to [her] face." As a result, she had bruises, cuts, and split lips. Sometimes she had black eyes, and sometimes a swollen jaw.

The escalation in the abuse was related to defendant's efforts to put together a million-dollar lawsuit against S.'s father for molesting her as a child. S. claimed at trial that the molestation never occurred, but defendant insisted that it did and that she had repressed her memories of it. Defendant would tell S. what her memories were, and she started believing him. Eventually, defendant focused almost all of his attention on the claims against S.'s father, and "if [she] didn't do [her] part, [she] would get beat." S. later testified that if she did not tell defendant what he wanted to hear, "[h]e would hit [her], he would hold a gun to [her] head and pull the thing on the gun. Ask [her] if [she] was ready to die. He would tell [her] that he was going to tie [her] up and leave [her] under the house or gut [her] and leave [her] out in some field or chop [her] into pieces."

By December 2003, defendant and S. were out of money and their house was in foreclosure. In January 2004, defendant obtained a book on "surviving ritualistic satanic abuse, or something to that effect," and defendant's story of S.'s molestation took on "a satanic cult theme." Around this time, defendant took to wearing "guns holstered through the house," and he also had a Taser and a sword in the bedroom.

While putting the molestation story together, defendant had S. contact old friends to see what they remembered. One of the friends was Lisa Clum. Once the "story evolved into the satanic theme," defendant "started weaving all kinds of people into the story," including Lisa Clum. According to defendant, "there was a plot to kill him and [they] were all involved in wanting to kill him. And it was all tied to this satanic cult that was supposedly in place." When Lisa Clum called and invited S. "to go to her church to listen to some talk that was being given," defendant "said that she was trying to set a trap to get [them] there to her church, which wasn't really a church, so that he would be killed."

By the time of Super Bowl Sunday in 2004, "[t]he story had evolved to where [S.] was now one of the child molesters of" her own children, and defendant wanted to record her confession. Defendant pointed a gun at S. and hit her until she told him what he wanted to hear.

In the first week of February 2004, an incident occurred in which defendant accidentally shot himself in the leg. Before law enforcement or medical personnel arrived, defendant told S.

to "stick to the story," which at that time was that Lisa Clum and her husband, Rock, as well as S., "were all planning to kill [defendant]." Because S. had visible bruises on her, defendant told her "to say that Rock Clum . . . had attacked [her] in Starbucks' parking lot."

After defendant was taken to the hospital, S. spoke with a detective and "told him the story."

On the night of February 10, 2004, defendant "was trying to get something from [S.] as far as the story goes" and "he had [her] pinned up against the wall in the bedroom with the sword pointed to [her] left shoulder/chest area." He began swinging the sword around, and as S. tried to block the sword she was cut on the finger. Defendant then stabbed the sword into the mattress and threw S. into the wall. While choking her with one hand, he hit her in the side of the head with other. That night, defendant made S. sleep next to him at gunpoint.

The next day, they "were going to go to Granite Bay looking for Lisa [Clum] to kill her." S. arranged to drop the girls off with a neighbor, and defendant told the two boys to "put their paintballs in the freezer and pack their paintball guns in the van." Defendant took his derringer and the Taser and the sword. They drove to a Starbucks to look for Lisa. They then drove all over Granite Bay looking for an address. At first, S. was driving, and defendant was telling her she had "better find Lisa's house." After he started driving, "he started hitting [her] and being very threatening." "He hit [her] with his fist. He hit [her] with the gun in the face. He hit [her] with [the]

Taser in the ribs and threw [her] into the window." As a result, her "nose was swollen" and it "felt like he had broke[n her] nose." Her "face was bloody and bruised and swollen" and her "ear was swollen." Eventually, when they could not find Lisa's house, defendant "dragged [S.] out of the car with a gun to the head and walked [her] out to [a] field." "He kept hitting [her] in the head and he held the gun to [her] head and asked if [she] was ready to die." He did not shoot her, however, and instead "dragged [her] back to the van, threw [her] in . . . , and . . . drove away." When they went to pick up the girls, defendant had her remain in the van with the boys pointing their paintball guns at her.

On February 22, 2004, when defendant and S. had returned home from somewhere and were coming into the house through the garage, defendant "started hitting [S.] and threw [her] into the trash cans and onto the floor and kicked [her]." He told her not to act like she was hurt, and she tried, but she was "unconsciously holding [her wrist] up because it was throbbing." Defendant picked up a metal pipe and hit her in the part of her arm that was starting to swell, then punched her in the face. S.'s nose began to bleed and she was coughing up blood. Defendant told her to go into the laundry room, and there he "started hitting [her] in the stomach and the ribs, hit [her] again in the face," "hit [her] in [her] ears," and "threw [her] into the wall." He then hit her in her left side with a piece of wood. As a result of this incident (sometimes referred to as the laundry room incident), S.'s nose "was very swollen and

bruised, th[e] side of [her] face . . . was bruised all the way down into [her] neck, and it was swollen, and [she had] black eyes."

On February 26, 2004, defendant and S. went to the sheriff's department and S. gave a detailed statement in which she admitted molesting her children. To explain the marks on her, she told the authorities Rock Clum had hit her. The authorities did not arrest S., but did send Child Protective Services to remove the children from the home. Two days later, however, defendant was arrested.

On March 1, 2004, an examination conducted on S. at a hospital revealed the following injuries: both of her ears were extremely swollen and bruised, with one ear canal 90 percent swollen shut; she had bruising on her face from underneath her eye all the way down to underneath her chin; her nose was broken; she had bruising on her neck, shoulder, arm, abdomen, and thigh; and she had five broken ribs.

On March 2, 2004, a criminal complaint was filed against defendant (case No. P04CRF0132). In June 2004, a nine-count information was filed in the case.

The prosecution of defendant proceeded under the information until April 2005, when the grand jury returned an 18-count indictment (case No. P05CRF0161). The charges in the indictment were as follows:

1. Torture;
2. Child abuse (victim R.);
3. Child abuse (victim A.);

4. Child abuse (victim C.);
5. Assault by means of force likely to produce great bodily injury;
6. Making a criminal threat;
7. Inflicting corporal injury on a spouse;
8. False imprisonment by violence;
9. Inflicting corporal injury on a spouse (with a great bodily injury enhancement);
10. Assault with a deadly weapon or by means of force likely to produce great bodily injury;
11. Making a criminal threat (with an arming enhancement);
12. False imprisonment by violence (with an arming enhancement);
13. Inflicting corporal injury on a spouse;
14. Assault with a deadly weapon or by means of force likely to produce great bodily injury (with a firearm use enhancement);
15. Making a criminal threat (with a firearm use enhancement);
16. Discharge of a firearm with gross negligence;
17. Inflicting corporal injury on a spouse (with a great bodily injury enhancement); and
18. Assault by means of force likely to produce great bodily injury.

The case was ultimately tried to a jury from October 2005 through January 2006. The jury found defendant guilty of torture (count I), three counts of misdemeanor child abuse

(lesser included offenses of counts II, III, and IV), one count of making a criminal threat (count VI), and three counts of inflicting corporal injury on a spouse (counts IX, XIII, and XVII). The jury rejected the great bodily injury enhancements on counts IX and XVII, found defendant not guilty on counts VII, VIII, X, XI, XII, XVI, and XVIII, and was unable to reach verdicts on counts V, XIV, and XV. The prosecution elected not to retry defendant on those counts.

After denying defendant's new trial motion, the court sentenced him to life in prison for torture, with the upper term of three years on the charge of making a criminal threat and the upper term of four years on each of three charges of inflicting corporal injury on a spouse stayed pursuant to section 654. The court also sentenced defendant to three consecutive terms of 180 days each on the misdemeanor child abuse charges.

DISCUSSION

I

Sufficiency Of The Evidence

Defendant offers two different challenges to the sufficiency of the evidence to support his convictions. Before we address each of those arguments, we set forth the governing legal principles.

"The standard of review is well settled: On appeal, we review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence--that is, evidence that is reasonable, credible and of solid value--from which a reasonable trier of fact could find

the defendant guilty beyond a reasonable doubt. [Citation.]

"[I]f the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute evaluation of a witness's credibility for that of the fact finder." [Citation.] "The standard of review is the same in cases in which the People rely mainly on circumstantial evidence. [Citation.] 'Although it is the duty of the [finder of fact] to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the [finder of fact], not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt.' [Citation.]

"An appellate court must accept logical inferences that the [finder of fact] might have drawn from the circumstantial evidence.' [Citation.] 'Before the judgment of the trial court can be set aside for the insufficiency of the evidence, it must clearly appear that on no hypothesis whatever is there sufficient substantial evidence to support the verdict of the [finder of fact].'" (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1572-1573.)

A

Torture

A person is guilty of torture if he "inflicts great bodily injury" "with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or any sadistic purpose." (§ 206.) Defendant argues there was

insufficient evidence he acted with the requisite intent here because his acts were not sufficiently "brutal." We disagree.

"Courts have interpreted intent to inflict 'cruel' pain and suffering as intent to inflict extreme or severe pain." (*People v. Burton* (2006) 143 Cal.App.4th 447, 452.) Thus, the question here is whether there was substantial evidence that defendant intended to inflict extreme or severe pain on S.

"Absent direct evidence of such intent, the circumstances of the offense can establish the intent to inflict extreme or severe pain." (*People v. Burton, supra*, 143 Cal.App.4th at p. 452.) For example, "a jury may infer intent to cause extreme pain from a defendant who focuses his attack on a particularly vulnerable area, such as the face, rather than indiscriminately attacking the victim." (*Ibid.*)

Before we turn to the evidence of defendant's intent, we must address whether torture can be committed by a course of conduct. As will be seen, this issue is significant to resolution of whether there was substantial evidence that defendant had the intent required for the crime.

1. *Torture As A Course Of Conduct Crime*

"[W]here violation of a criminal statute is charged and the evidence establishes several acts, any one of which could constitute the crime charged," either the state must "'select the particular act upon which it relied to make good the allegation of the information'" or the jury must be instructed "that they must agree unanimously on which act they based their guilty verdict." (*People v. Thompson* (1984) 160 Cal.App.3d 220,

223-224.) "Neither instruction nor election are required, however, if the case falls within the continuous course of conduct exception," which arises "when the acts are so closely connected that they form part of one and the same transaction, and thus one offense" or "when . . . the statute contemplates a continuous course of conduct of a series of acts over a period of time." (*Id.* at p. 224.)

It is clear the torture statute, section 206, does not require the intent to cause or the actual causing of *prolonged* pain. (*People v. Hale* (1999) 75 Cal.App.4th 94, 108.) But that is not the same thing as saying the prosecution is precluded from proving infliction of bodily injury or a defendant's intent to cause cruel or extreme pain by a course of conduct occurring over time.

Here, the prosecution proceeded on the theory that defendant committed the crime of torture against S. by a course of conduct between June 2003 and February 2004. Defendant argues, however, that torture is not a crime that can be committed by a course of conduct. As we will explain, defendant is mistaken.

"Decisions on the continuous course of conduct exception have focused on the statutory language in an attempt to determine whether the Legislature intended to punish individual acts or entire wrongful courses of conduct." (*People v. Salvato* (1991) 234 Cal.App.3d 872, 882.) "[C]ertain verbs in the English language denote conduct which occurs instantaneously, while other verbs denote conduct which can occur either in an

instant or over a period of time." (*People v. Gunn* (1987) 197 Cal.App.3d 408, 415.) In the latter situation, where the statute "may be violated by a single act" or "repetitive or continuous conduct," and the charging instrument "allege[s] a course of conduct in statutory terms which . . . occurred between two designated dates," "[t]he issue before the jury [i]s whether the accused [is] guilty of a course of conduct, not whether . . . he committed a particular act on a particular day." (*People v. Ewing* (1977) 72 Cal.App.3d 714, 717.)

Here, defendant argues that the operative language of section 206 -- specifically, the word "inflicts" -- does not denote conduct that can occur over a period of time. He contends "[i]nfliction of injury normally occurs as the result of a violent act" and "[t]he infliction of great bodily injury is not a gradual or continuous process. It is a discrete criminal event."

Defendant's argument is contradicted by the plain meaning of the word "inflict," which includes "to cause (something unpleasant) to be endured." (*Merriam-Webster's Collegiate Dict.* (11th ed. 2006) p. 641 col. 1.) Obviously a person can be forced to endure something unpleasant over a period of time. Indeed, anyone who has visited a chamber of horrors in a wax museum can conjure up any number of classic instruments of torture -- such as the rack -- that are specifically *designed* to inflict pain and injury over an extended period of time.

Defendant's argument is also contradicted by case law applying the continuous course of conduct exception to other

criminal statutes that penalize the "infliction" of pain or injury. For example, child abuse may be committed by "willfully caus[ing] or permit[ting] any child to suffer, or inflict[ing] thereon unjustifiable physical pain or mental suffering."

(§ 273a, italics added.) In *People v. Ewing*, *supra*, this court held that "[a]lthough the child abuse statute may be violated by a single act [citation], more commonly it covers repetitive or continuous conduct." (72 Cal.App.3d at p. 717.) Similarly, the crime of spousal abuse (also, spousal battering or infliction of corporal injury on a spouse) is committed by "willfully inflict[ing] upon a . . . spouse . . . corporal injury resulting in a traumatic condition." (§ 273.5, subd. (a), italics added.) In *People v. Thompson*, *supra*, the appellate court followed *Ewing* in holding that the spousal abuse statute, like the child abuse statute, is "aimed at repetitious activity which culminates in prohibited conduct." (160 Cal.App.3d at p. 225; see also *People v. Sanchez* (2001) 94 Cal.App.4th 622, 632-633 [the crime of animal abuse, which includes "'inflict[ing] unnecessary cruelty upon [an] animal,'" can be committed by a course of conduct].)

Defendant contends a comparison of the torture statute with the spousal abuse statute is "inapt because the spousal abuse statute requires a continuing domestic relationship between the parties, whereas the torture statute does not." Defendant is wrong. The spousal abuse statute does not require "a continuing domestic relationship" between the perpetrator and the victim because while the statute applies where the victim is a "spouse" or "cohabitant" of the perpetrator, it also applies where the

victim is a "former spouse" or "former cohabitant" -- i.e., where there is no longer a domestic relationship between the parties.

In any event, the nature of the relationship between the perpetrator and the victim is not the reason spousal abuse can be committed by a course of conduct. The reason spousal abuse can be committed by a course of conduct is because the infliction of corporal injury resulting in a traumatic condition can, as a matter of simple reason, occur either as the result of a single act or as the result of a series of acts.

Just as child, spousal, and animal abuse can be committed by a course of conduct rather than a single act, so can torture. In *People v. Salvato*, *supra*, 234 Cal.App.3d at page 872, the court held that the crime defined by section 136.1 (dissuasion of a witness) set forth a course of conduct crime because the statute "focuses on an unlawful goal or effect . . . rather than on any particular action taken to produce that end. . . . The gravamen of the offense is the cumulative outcome of any number of acts, any one of which alone might not be criminal. Thus it falls within the continuous conduct exception" (*People v. Salvato*, *supra*, 234 Cal.App.3d at p. 883.) The same goes for the torture statute. For torture, the "unlawful goal or effect" is the infliction of great bodily injury with the intent to cause severe pain for the purpose of revenge, extortion, persuasion, or for any sadistic purpose. Where (as here) torture is charged and tried as a course of conduct crime, no single act in the perpetrator's course of conduct may result in

great bodily injury. But where the cumulative result of the course of conduct is great bodily injury, and the requisite intent can be found, then the crime of torture has been committed under the course of conduct exception to the election/unanimity requirement.

2. Intent To Cause Severe Pain

With the understanding that torture can be a course of conduct crime, we turn back to whether there was substantial evidence that when defendant inflicted great bodily injury on S., he did so with the intent to cause her severe pain.

As we have noted, the intent to cause severe pain need not be proven by direct evidence, but can be inferred from the circumstances of the offense, such as a focused attack on a particularly vulnerable area. (*People v. Burton, supra*, 143 Cal.App.4th at p. 452.) Here, in explaining why she did not seek medical treatment for the injuries defendant inflicted on her, S. testified she "wasn't allowed to" because if she "acted like [she] was hurt, [defendant] would kick [her] again or hit [her] where he had just hurt [her] before. He targeted already broken bones and swollen bruises." As an example, S. had earlier testified about the incident when she and defendant were coming inside from the garage. Defendant "started hitting [her] and threw [her] into the trash cans and onto the floor and kicked [her]." She jumped up and tried to pretend she was not hurt, but was unconsciously holding her wrist up because it was throbbing. When defendant saw that she was favoring her wrist, he picked up a metal pipe and hit her "on the part of [her] arm

that was starting to swell." S. also testified that on occasion defendant "hit [her] in the ribs which were already sore from a few nights before that."

We believe a jury could reasonably determine that a person who deliberately strikes his victim on an area of the body that is already injured has the intent to cause severe pain -- or, defendant puts it, "a level of pain over and above the level of pain that a victim would suffer in an ordinary assault or battery."

Defendant contends S.'s "generic claim that he would hit her in sore ribs and target already broken bones" will not support his torture conviction because "there was no evidence that he knew that she had sore ribs and already broken bones when he did these generic acts." Later, he complains that the People "do[] not cite substantial evidence to show that [he] had that knowledge."

Defendant's argument misapprehends the burden imposed on defendant who challenges the sufficiency of the evidence. It is not enough for defendant to simply say "there was no evidence"; instead, "he must affirmatively demonstrate that the evidence is insufficient" on the point in dispute. (*People v. Sanghera*, supra, 139 Cal.App.4th at p. 1573.) For the same reason, defendant's complaint that the People have not cited substantial evidence misses the point. The People do not bear the burden of showing the conviction is supported by substantial evidence; instead, because "we must begin with the presumption that the evidence . . . was sufficient," it is defendant, as the

appellant, who "bears the burden of convincing us otherwise."
(*Ibid.*)

The question here is whether there was sufficient evidence that defendant knew he was striking S. where she was already injured when he "targeted already broken bones and swollen bruises." Defendant has not carried his burden of showing there was no such evidence. In any event, the incident in the garage supplies one example of such evidence, because the jury could have found based on S.'s testimony regarding that incident that defendant knew her arm was injured when he struck her there with a metal pipe. Indeed, we believe the jury could have reasonably inferred more generally from the evidence, including (but not limited to) the evidence regarding the frequency of defendant's physical assaults on S., that he knew where he had struck her recently and therefore knew where he could strike her again to cause her greater pain.

Defendant argues, however, that to convict him of torture, the jury had to find not only that he acted with the intent to cause extreme pain, but that the action he undertook with that intent was one that in fact caused great bodily injury. Thus, he contends, "[i]f S. claimed that [he] struck her on the arm because he saw that she was favoring it, that would not be torture unless there was concomitant proof that the blow resulted in great bodily injury." By inference, defendant suggests there was no such proof here.

It is with regard to this argument that the nature of the crime of torture as one that can be committed by a course of

conduct becomes significant. Defendant's argument presumes that each act of violence he committed on S. must be analyzed separately to determine if there was evidence that particular act was committed with the intent to cause severe pain and evidence that particular act resulted in great bodily injury. This is incorrect. Where, as here, torture is charged and tried as a course of conduct crime, such analysis is unnecessary. The question for the jury was not whether S. suffered great bodily injury from a particular act defendant committed on a particular day with the intent to cause her severe pain. Rather, the question was whether, with that intent, defendant engaged in a course of conduct toward S. that resulted in great bodily injury. As long as the jury could reasonably find that defendant had the requisite intent when he engaged in the course of conduct, and that the course of conduct resulted in great bodily injury, then the evidence is sufficient to support a torture conviction.

Here, S.'s testimony was sufficient to support the reasonable inference that during his course of physical assaults on her, defendant intentionally targeted areas of her body where he had injured her already and thus acted with the intent to cause her severe pain. This was enough to support a finding that defendant had the intent required for the crime of torture.

B

Criminal Threat

A person is guilty of making a criminal threat if he "willfully threatens to commit a crime which will result in

death or great bodily injury to another person, with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety." (§ 422.)

The criminal threat charge of which defendant was convicted was based on the tape recording he made in February 2004. S. testified that defendant wanted to record her confessing that she had molested their children. He turned on the tape recorder and sat with a gun in his lap as he questioned her. During the recording session, defendant found a piece of paper on which Lisa Clum had written the name of a Christian counseling center three months earlier. The piece of paper was actually an appointment reminder for an orthodontic appointment for Lisa's daughter, Ashley. Upon defendant's discovery of the reminder slip, the following exchange occurred (according to the transcript of the recording):

"Richard: [W]hat is it, what is this, Ashley? What is it? What is this? What is this? What is it?

"[S.]: I don't know. I want to know as much as you do. I honestly do not know.

"Richard: [B]elieve

"[S.]: I do not know.

"Richard: Oh, but you're [sic] know lots of other things, so you just start answering these fucking questions.

"[S.]: Okay. I want to. Ask me, please.

"Richard: (Yelling) You (Inaudible) shit. Raw shit. (Inaudible) time you leave me. With your fucking whore fake pastor, what, did you fuck her? Yeah. Get indoctrinated into the church? You better fucking come clean.

"[S.]: I (Inaudible)

"Richard: I wouldn't (Inaudible) up, Sue. Because I'll kill you now if you (Inaudible). You're not escaping this one. And you give me information you just start talking. Get going."

Defendant contends that because his threat to kill S. was conditional ("I'll kill you now if you"), but due to the inaudible portion of the tape "the condition was never established," the evidence was insufficient to support his conviction of making a criminal threat. We disagree.

"To constitute a criminal threat, a communication need not be absolutely unequivocal, unconditional, immediate, and specific. The statute includes the qualifier 'so' unequivocal, etc., which establishes that the test is whether, in light of the surrounding circumstances, the communication was sufficiently unequivocal, unconditional, immediate, and specific as to convey to the victim a gravity of purpose and immediate prospect of execution." (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 861.) "[W]hether the words were sufficiently unequivocal, unconditional, immediate and specific they conveyed to the

victim an . . . immediate prospect of execution of the threat can be based on all the surrounding circumstances and not just on the words alone." (*People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1340.) "[I]t is the circumstances under which the threat is made that give meaning to the actual words used. Even an ambiguous statement may be a basis for a violation of section 422." (*People v. Butler* (2000) 85 Cal.App.4th 745, 753.) The jury is "free to interpret the words spoken from all of the surrounding circumstances of the case." (*Mendoza*, at p. 1341.)

Here, in arguing the evidence is insufficient to show his threat conveyed the requisite "gravity of purpose and immediate prospect of execution," defendant ignores all of the surrounding circumstances and bases his argument on the words of the threat alone -- or, more accurately, on the words that are *missing* from the recording of the threat due to the inaudible portion of the recording. But, as we have seen, the law does not permit such a myopic examination of the evidence. Rather, we must look to *all* of the surrounding circumstances, including the words that were recorded, to determine if the jury could have reasonably found that the threat carried the requisite gravity of purpose and immediate prospect of execution, despite the inaudible portion of the tape following the word "if."

We conclude the evidence was sufficient for this purpose. Although the recording does not reveal exactly what condition defendant placed on his threat, from the context and surrounding circumstances the jury reasonably could have determined that defendant essentially threatened to kill S. if she did not

cooperate and answer his questions about the slip of paper he had found. Indeed, virtually everything defendant said immediately before and after his threat supports such a determination. Before his threat, he demanded that she "just start answering these fucking questions" and that she "better fucking come clean." Immediately after the threat, he told her she was "not escaping this one" and told her to "give [him] information," "just start talking," and "[g]et going." Under these circumstances, the jury did not need to know the exact words of the condition defendant placed on the threat to conclude that the threat was so unconditional as to convey a gravity of purpose and an immediate prospect of execution. Accordingly, defendant's sufficiency of the evidence challenge to his conviction of making a criminal threats fails.

II

Misdemeanor Child Abuse Convictions

A person is guilty of misdemeanor child abuse if (among other things), he "willfully causes or permits any child to suffer, or inflicts thereon unjustifiable . . . mental suffering" "under circumstances or conditions other than those likely to produce great bodily harm or death." (§ 273a, subd. (b).) If the abuse occurs "under circumstances or conditions likely to produce great bodily harm or death," then the crime is a felony. (§ 273a, subd. (a).)

Here, defendant contends his misdemeanor child abuse convictions must be reversed because they were barred by the one-year statute of limitations. In the alternative, he

contends the convictions must be reversed "[b]ecause the prosecutor's theory intruded upon the fundamental constitutional rights of parenting and of free expression." We disagree on both points.

A

Procedural Background

A criminal complaint was originally filed against defendant on March 2, 2004, in case No. P04CRF0132 (the 2004 case). The complaint did not contain any child abuse charges.

On May 27, 2004, an amended complaint was filed in the 2004 case. The amended complaint included three charges of felony child abuse alleged to have occurred between February 1, 2004 and February 22, 2004. Each child abuse charge in the amended complaint broadly alleged that defendant "did willfully and unlawfully, under circumstances likely to produce great bodily harm and death, did cause and permit a child . . . to suffer unjustifiable physical pain or mental suffering or to be placed in such situation that his/her person and health may be endangered."

On June 10, 2004, defendant waived his right to a preliminary hearing, and on June 21 an information was filed containing the same three child abuse charges as the amended complaint.

In January 2005, defendant filed a motion seeking to force the prosecution to elect the acts on which various charges in the information -- including all three child abuse charges -- were based. In response to that motion, the prosecution

informed defendant an election was impossible because the child abuse charges were based on a continuing course of conduct. At the hearing on the motion, defendant argued that the child abuse charges were apparently based on "the prosecution theory . . . that . . . there was violence to [the children's] mother and that it was in or about their presence." When the court pointed out that "each count [was] alleged to have occurred between February 1st and February 22nd of 2004" "[s]o you are on notice in that regard," defendant complained that he "didn't know what incident -- what claimed incident that they are going to be relying on." The prosecutor responded, "And the People's answer is it is a continuing course of conduct during that time frame. It is our contention that the defendant beat his wife in the presence of his children four out of seven days a week, five out of seven days a week. [¶] We have statements from the children as to witnessing these acts of violence and seeing the injuries on their mother. . . . [¶] We have statements of the victim of those acts herself who says that they occurred in the presence of her children" The prosecutor later added "that the People's theory is one of mental suffering caused in the children by the environment that they were subjected to by the defendant's continuous abuse and beating and, essentially, torture of their mother in their presence." The court concluded "sufficient notice ha[d] been given" because "[w]e have the specific time period, the specific theory of mental suffering. [¶] We know by established law that any-- if the children witnessed any physical harm, threats, injuries between the

parents, that that is sufficient to violate those code sections."

Trial was eventually set for April 26, 2005. At the readiness conference on April 1, 2005, defendant asked for a continuance. Trial was reset for May 24.

Meanwhile, in mid-April, the prosecutor sought an indictment from the grand jury. Before the grand jury, R. testified that he saw and heard defendant hit S. and that these incidents occurred with increasing frequency in the three or four months before February 2004. He also testified that defendant told him his grandfather was the head of a demonic cult, that the cult was trying to kill defendant, that his grandfather had molested S. and the children, and that S. had molested the children also.

A. testified similarly about seeing defendant strike S. and about what defendant told him.

C. testified that although she never saw defendant hit or kick S., she heard them fighting, heard S. say that she did not want defendant to hit her, and saw S.'s injuries. C. also testified that defendant told her S. was molested by her father and that S. molested the children.

On April 15, 2005, the grand jury presented an indictment against defendant, which was assigned case No. P05CRF0161 (the 2005 case). As relevant here, the child abuse charges in the indictment were identical to those in the information in the

2004 case -- one for each of the three children² -- with the exception that the indictment alleged that the child abuse occurred between November 1, 2003, and February 26, 2004.

Defendant was arraigned on the indictment that same day and pled not guilty. When defense counsel asked if the 2004 case was dismissed, the prosecutor objected to a dismissal, asserting that she wanted the indictment to supersede the charging instrument in the earlier case. The court declined to decide the issue, leaving it open for further argument or briefing later.

On April 27, 2005, defendant filed another motion to continue the trial, which was granted. Trial was reset to October.

On July 22, 2005, defendant filed a motion to dismiss the information in the 2004 case, asserting dismissal was required because of the filing of the indictment in the 2005 case. In defendant's view, "An Information and indictment cannot logically exist at the same time." The People opposed the motion, asserting that "[a]n indictment may supersede a pending Complaint or Information."

Defendant's motion to dismiss the information was heard on August 19, 2005. The trial court apparently concluded "the Indictment does supersede the Information or Complaint as long

² No charge was filed with respect to the fourth child.

as the basic facts are the same."³ A handwritten note on the indictment that appears to be dated October 18, 2005 (the fourth day of trial, during jury selection) states that the indictment "Supercedes Information case #P04CRF0132."

On December 16, 2005, following the close of evidence, the parties and the court discussed jury instructions. Defendant argued that the child abuse charges were "spread out from 11/1 to 2/26" and "[w]e don't know what the particular act has been on this. And we'd like some-- I think that we should have had clarification on this." The prosecutor explained that she was going to request the jury be instructed with those portions of the felony child abuse instruction (CALJIC No. 9.37) that refer to a person who willfully inflicts unjustifiable mental suffering on a child or willfully causes a child such suffering.

For tactical reasons, defendant asked the trial court not to instruct the jury on misdemeanor child abuse as a lesser included offense of felony child abuse, but the court concluded it had to instruct on the misdemeanor.

In instructing on felony child abuse, the trial court instructed the jury that "[e]very person who, under circumstances or conditions likely to produce great bodily harm or death, willfully inflicts unjustifiable mental suffering on a child, or willfully causes or permits a child to suffer

³³ This language, which we believe is attributable to the trial court, appears in the minute orders from the hearing (one in each case). No transcript of that hearing was included in the record on appeal.

unjustifiable mental suffering, is guilty of a violation of Penal Code Section 273a(a)." Later, however, in instructing the jury on the elements of the crime, the court omitted the word "permits" and instructed the jury that "[i]n order to prove this crime, each of the following elements must be proved: [¶] One, a person willfully inflicted unjustifiable mental suffering on a child. [¶] Or, two, a person willfully caused a child to suffer unjustifiable mental suffering. [¶] And, three, the person's conduct occurred under circumstances likely to produce great bodily harm or death."

With regard to the mental element of the crime, the court instructed the jury that "there must exist a union or joint operation of act or conduct and general criminal intent." The jury was not instructed on criminal negligence with relation to this crime.⁴

The court's instructions on misdemeanor child abuse paralleled its instructions on felony child abuse, except for the obvious omission of the "circumstances" that turn the misdemeanor into a felony.⁵

⁴ The jury was later instructed on gross negligence, but this instruction related specifically to the charge of discharging a firearm. At that time, the court reiterated that with respect to the child abuse charges (and various other charges), "there must exist a union or joint operation of act or conduct and general criminal intent."

⁵ Also, the court did not mention the word "permits" in instructing on the misdemeanor.

The jury acquitted defendant on the felony child abuse charges but found him guilty of the lesser included misdemeanors.

B

Statute Of Limitations

With this background, we turn to defendant's argument -- which he raises for the first time on appeal -- that his convictions for misdemeanor child abuse must be reversed because they were "facially time-barred."

With exceptions not applicable here, the prosecution for a misdemeanor must be commenced within one year after commission of the offense. (§ 802, subd. (a).) This limitation period applies to a misdemeanor that is a lesser included offense of a charged felony. (§ 805, subd. (b) ["The limitation of time applicable to an offense that is necessarily included within a greater offense is the limitation of time applicable to the lesser included offense, regardless of the limitation of time applicable to the greater offense"].)

"[P]rosecution for an offense is commenced when any of the following occurs: [¶] (a) An indictment or information is filed. [¶] (b) A complaint is filed charging a misdemeanor or infraction. [¶] (c) The defendant is arraigned on a complaint that charges the defendant with a felony. [¶] (d) An arrest warrant or bench warrant is issued, provided the warrant names or describes the defendant with the same degree of particularity required for an indictment, information, or complaint."

(§ 804.)

Defendant's statute of limitations argument rests on the premise that his prosecution on the lesser included misdemeanor child abuse charges of which he was convicted began on April 15, 2005, when the indictment was filed against him. We agree, because "multiple prosecutions for the same acts are distinct." (*People v. Le* (2000) 82 Cal.App.4th 1352, 1358.) Thus, when the indictment was filed on April 15, 2005, in the 2005 case, that filing commenced a different prosecution than the prosecution in the 2004 case.

But the fact that the prosecution in the 2005 case did not commence until April 15, 2005, more than a year after the child abuse ended, is not dispositive of whether the prosecution on the misdemeanor charges was time-barred. This is so because "[n]o time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter." (§ 803, subd. (b).) Thus, if the child abuse charges in the 2004 case were based on the "same conduct" as the child abuse charges in the 2005 case, then the prosecution in the 2005 case was timely because the entire period of the earlier prosecution would not count toward the one-year limitations period.

Defendant contends that for the People to claim the benefit of the tolling provision in section 803, they had to plead and prove that the child abuse charges in the 2004 case were based on the "same conduct" as the child abuse charges in the 2005 case, which they did not do; accordingly, the misdemeanor child abuse charges were barred by the statute of limitations. The

People offer several arguments in response, which we will address in turn.

First, the People argue that "the issuance of a valid arrest warrant commences the prosecution and tolls the statute of limitations," and defendant "was arrested on February 28, 2004"; therefore, "the statute [of limitations] was tolled on [that date]." The People are mistaken. It is true, as we have noted, that the issuance of an arrest warrant commences the prosecution of an offense "provided the warrant names or describes the defendant with the same degree of particularity required for an indictment, information, or complaint." (§ 804, subd. (d).) Here, however, the People do not direct our attention to any evidence that any such arrest warrant was ever issued for defendant on the child abuse charges now at issue. Instead, the People refer only to the fact of defendant's arrest, which was followed by the filing of a complaint that, according to the People, contained charges that "included the conduct which later formed the basis of the child [abuse] charges." This is insufficient, however, to show that the statute of limitations was tolled on the charges of misdemeanor child abuse of which defendant was convicted in the 2005 case. Absent evidence of an arrest warrant on *those* charges that met the specificity requirements of section 804, the People's first argument fails.

The People next argue that the limitation period was "clearly tolled on May 27, 2004, when the prosecutor amended the complaint [in the 2004 case] to include the felony charges of

child [abuse]." The validity of this argument depends on whether the child abuse charges in both cases were based on the "same conduct," thereby triggering the tolling provision in section 803, subdivision (b). The People acknowledge defendant's argument that they had to "plead and prove the application of [that tolling provision]," but they argue their obligation in that regard arises only if the defendant "'puts the prosecution to its proof'" in the trial court. (Italics omitted.) The People are mistaken. The rule is this: If the People plead facts to avoid the bar of the statute of limitations, and the defendant fails to put the People to their proof in the trial court, then the defendant forfeits the statute of limitations issue and cannot raise it for the first time on appeal. (See *People v. Thomas* (2007) 146 Cal.App.4th 1278, 1287-1289.) However, "when the charging document indicates on its face that the action is time-barred, a person convicted of a charged offense may raise the statute of limitations at any time." (*People v. Williams* (1999) 21 Cal.4th 335, 341.) Here, the indictment filed in April 2005 did not contain any allegations of facts tolling the statute of limitations on the lesser included offenses of misdemeanor child abuse of which defendant was ultimately convicted. Therefore, the charging document showed on its face that the charges were time-barred, and defendant did not forfeit his statute of limitations argument by failing to put the People to their proof in the trial court.

When the charging document shows on its face that the charges were time-barred and the appellate court "cannot determine from the available record whether the action is barred, . . . it should remand for a hearing." (*People v. Williams, supra*, 21 Cal.4th at p. 341.) Here, the People argue the record clearly shows the action was not barred because the record shows the prosecution for child abuse in the 2004 case was based on the "same conduct" as the prosecution for child abuse in the 2005 case. We agree.

It is important to recall that after the indictment was filed in the 2005 case, the trial court denied defendant's request to dismiss the information in the 2004 case and instead ruled that the indictment superseded the information. In doing so, the trial court effectively treated the indictment as an amendment of the prior pleading, rather than as an entirely new pleading. As the People point out, this means "the grand jury indictment was not a new action, but rather a continuation of the previous action," particularly since "the charges were identical, consistently named the same victims, and always encompassed the time period of the month of February in 2004."

Defendant nevertheless contends that "[b]ecause [he] was held to answer upon waiver of preliminary hearing, the record does not show a factual basis for these events" on which the 2004 case was based. He contends that "[w]ithout a factual basis, there is no way to determine whether the prior charges involved the 'same conduct' as the child endangerment charges alleged in the indictment."

We reject defendant's suggestion that only evidence from a preliminary hearing could show the conduct on which the child abuse charges in the 2004 case were based. On the record before us, the People's response to defendant's motion seeking to force the People to make an election on the child abuse charges in the 2004 case shows just as clearly as any transcript from a preliminary hearing could (if not more so) the conduct on which the People based those charges. As we have explained, in asserting she did not have to make an election, the prosecutor expressly told defendant and the court that the charges were based on "a continuing course of conduct" that consisted of "defendant's continuous abuse and beating and, essentially, torture of the[children's] mother in their presence" between February 1, 2004 and February 22, 2004.

The question for us is whether this conduct was the "same conduct" as the conduct on which the child abuse charges in the 2005 case were based. Two factors complicate the analysis of that question. First, although she elicited evidence the children had seen and/or heard defendant physically abusing S., in closing argument the prosecutor emphasized the mental suffering defendant inflicted on the children by telling them "[s]omething so horrific that children just don't have any business knowing." Second, and more importantly, the jurors were not instructed on the legal principles that would have allowed them to convict defendant of indirect child abuse based on their seeing and/or hearing defendant's physical abuse of S.

Instead, they were instructed only on the theory of direct abuse.

"Section 273a encompasses a wide variety of situations and includes both direct and indirect conduct. [Citations.] When the harm to a child is directly inflicted, the requisite mental state for the section 273a offense is general criminal intent. [Citation.] When that harm is indirectly inflicted, the requisite mental state is criminal negligence." (*People v. Burton, supra*, 143 Cal.App.4th at p. 454.) When a charge of child abuse is based on the mental suffering resulting from a child being exposed to physical abuse by one parent against the other, the theory at issue is *indirect* child abuse, for which criminal negligence is the requisite mental state. (See *id.* at pp. 450-451, 454-455 [indirect child abuse at issue where physical attack on child's mother occurred in child's presence].)

As we have noted, the jury here was not instructed on criminal negligence in connection with the child abuse charges against defendant. Rather, the jury was instructed only on general criminal intent. Thus, the question here is this: Given that defendant was convicted of child abuse on a theory of direct abuse based on the things he told the children that caused them mental suffering, were the child abuse charges in the indictment nevertheless based on the "same conduct" as the child abuse charges in the superseded information, which the prosecutor said were based on indirect abuse defendant inflicted

on the children by physically abusing their mother in their presence?

Defendant does not address this question, but we conclude the answer is "yes." The drafters of the pertinent statute observed that "[t]he test of the "same conduct," involving as it does some flexibility of definition, states a principle that should meet the reasonable needs of prosecution, while affording the defendant fair protection against an enlargement of the charges after running of the statute.'" (*People v. Bell* (1996) 45 Cal.App.4th 1030, 1064.) Applying that "flexibility of definition," the appellate court in *Bell* determined that charges of forgery and false filings of petitions for bankruptcy or grant deeds were based on the "same conduct" as rent skimming charges where "the forgery and false filings were merely aspects of [the] rent skimming scheme." (*Id.* at pp. 1039, 1064.) Similarly, in *People v. Greenberger* (1997) 58 Cal.App.4th 298, the appellate court determined that kidnapping and murder charges were based on the "same conduct" where "the facts . . . clearly establish[ed] that the kidnapping was part of the same conduct that resulted in [the] murder." (*Id.* at p. 369.)

Given the "flexibility of definition" in the phrase "the same conduct," we conclude the child abuse charges in the 2005 case were based on the same conduct as the child abuse charges in the 2004 case, notwithstanding the change in theory from direct child abuse to indirect child abuse. The victims were the same, the indictment covered the entire period previously covered by the information, and the trial court determined that

the indictment superseded the information. Moreover, unlike in either *Bell* or *Greenberger*, the same criminal charges (child abuse) were alleged in both the information and the indictment. This is not a case involving "completely separate instances of criminal conduct," where the tolling provision in section 803, subdivision (b) does not apply. (*People v. Terry* (2005) 127 Cal.App.4th 750, 769.)

Because the child abuse charges in both cases were based on the same conduct, the prosecution of the 2004 case tolled the statute of limitations on the misdemeanor child abuse charges of which defendant was convicted. Therefore, those charges were not time-barred.

C

Infringement Of Defendant's Constitutional Rights

Defendant's alternate challenge to his convictions for misdemeanor child abuse rests on the prosecution's theory of direct abuse. Defendant contends "the People elected to prosecute [him for child abuse] on the narrow theory that he . . . inflict[ed] unjustifiable mental suffering on his children by telling them upsetting stories." He further contends that "[b]ecause the prosecutor's theory intruded upon the fundamental constitutional rights of parenting and of free expression, the attempt to criminalize parental storytelling must fail, and the three convictions for misdemeanor child [abuse] must be reversed."

The People dispute the initial premise of defendant's argument, asserting that the child abuse charges were based not

only on what defendant told the children, but also on his conduct, including (but not limited to) "the act of firing a gun in the vicinity of the children and . . . leaving his unsecured weapons around the house in areas easily accessible to the children."

Defendant contends the child abuse charges could not have been based on this conduct, which was not directed at the children, because any such conduct would have amounted to only *indirect* child abuse, not *direct* child abuse, and the jury was not instructed on indirect child abuse because no instruction on criminal negligence -- one of the elements of indirect child abuse -- was given.

Although defendant is correct on this initial point, we conclude his argument ultimately fails because a parent does not have a constitutional right to willfully inflict unjustifiable mental suffering on his children, even if the instrument of this suffering is "parental storytelling."

"[W]hen a defendant raises a plausible First Amendment defense" to a criminal charge, "a reviewing court should make an independent examination of the record . . . to ensure that [the defendant's] free speech rights have not been infringed by [the] trier of fact's determination that the communication at issue constitutes a [crime]." (*In re George T.* (2004) 33 Cal.4th 620, 632.) Here, even assuming defendant's constitutional defense is "plausible," we find no infringement of his constitutional rights by his child abuse convictions.

Defendant contends a conviction for child abuse based on things he told his children impermissibly infringes on his "fundamental constitutional rights of parenting and of free expression." He asserts that "[w]hether or not the children had any business knowing [what he told them] is a decision to be made by parents, not by the state. The decision as to whether or not to tell children about matters affecting the family and family relationships -- even if they are upsetting or disturbing or false -- belongs to the parent." He further contends that because his statements to his children "were not indecent, lewd, or obscene," his speech was constitutionally protected under "his right of free expression in his home."

We are not persuaded. By his own admission, the evidence showed that defendant told his children that:

- (1) their grandfather was a child molester who molested their mother (S.) throughout her childhood;
- (2) their grandfather was the leader of a satanic cult that was plotting to kill him (defendant) and either abduct or kill the children; and
- (3) their grandfather and their mother had molested them.

Moreover, defendant does not deny that the evidence before the jury would have allowed the jury to reasonably conclude that these things he told the children were *false*. Thus, given the nature of defendant's convictions, he is essentially arguing that he had a constitutional right to willfully inflict unjustifiable mental suffering on his children by falsely telling them that their mother and grandfather were both child

molesters, that they themselves had been molested by their mother, and that their grandfather was the leader of a satanic cult that was plotting to kill their father and kidnap or kill the children. None of the cases he cites, however, comes close to supporting this proposition.

In *Emery v. Emery* (1955) 45 Cal.2d 421, in the course of explaining why "an unemancipated minor may sue his parent for a wilful or malicious tort," our Supreme Court stated that "[s]ince the law imposes on the parent a duty to rear and discipline his child and confers the right to prescribe a course of reasonable conduct for its development, the parent has a wide discretion in the performance of his parental functions, but that discretion does not include the right wilfully to inflict personal injuries beyond the limits of reasonable parental discipline. No sound public policy would be subserved by extending it beyond those limits. While it may seem repugnant to allow a minor to sue his parent, we think it more repugnant to leave a minor child without redress for the damage he has suffered by reason of his parent's wilful or malicious misconduct. A child, like every other individual, has a right to freedom from such injury." (*Id.* at pp. 429-430.)

Although *Emery* did not involve criminal charges or the constitutional rights defendant asserts here, we nonetheless find its language persuasive on the issues before us -- particularly in the absence of any persuasive authority from defendant. A child's right to freedom from injury caused by his or her parent's willful misconduct extends to freedom from

unjustifiable mental suffering, even when that suffering results only from things the parent says to the child. "[A] state is not without constitutional control over parental discretion in dealing with children when their physical or mental health is jeopardized." (*Parham v. J. R.* (1979) 442 U.S. 584, 603 [61 L.Ed.2d 101, 119].) Under the circumstances of this case, we conclude defendant's constitutional rights were not unduly infringed by his child abuse convictions.

III

Evidentiary Errors

A

Denial Of Motion To Strike

On cross-examination, to establish bias, defense counsel elicited from A. the fact that A. was angry with defendant. On one occasion, defense counsel asked A., "What caused that anger?" and A. responded, "I started thinking about the times that he'd abused my mom." Later, defense counsel elicited from A. that "[f]iguring out [defendant] was a bad guy made [A.] angry at [defendant]." Defense counsel then asked A. whether he testified about various incidents because he was angry with defendant, and counsel asked A. to confirm that he was "angry with [defendant] because [A.] saw him hit [A.'s] mom." A. responded, "One of the reasons, yes." Defense counsel then asked, "You think he let you down because you don't think what he was telling you about [the] molest is true, do you?" A. responded, "I don't know. Um, I think he let me down for a lot of other reasons."

Defense counsel did not follow up on what these "other reasons" were, but the prosecutor did. On redirect examination, the prosecutor asked, "Why do you think your dad let you down?" A. responded, "Because he's abused my mom, he's abused me. He's emotionally and mentally abused my siblings. [¶] Let's see. All the pornography that he had, after him telling us that pornography is bad. [¶] He told us never to smoke, he smoked." At this point, defense counsel objected "for lack of foundation, 352" and moved to strike the testimony. The court invited counsel to approach, and outside the hearing of the jury a discussion ensued over the relevance and admissibility of A.'s reasons for feeling that defendant let him down. Defendant asked the court "to strike that last portion about pornography" and defense counsel asked the court "to instruct the jury to disregard everything after . . . my mother abused me."⁶ The court refused these requests, noting that "[o]ne way or another you opened up that he believes his dad let him down" and therefore the prosecutor could "ask him what the other reasons are."

On appeal, defendant contends the trial court erred in denying his motion to strike A.'s testimony because, as stated in *People v. Zemavasky* (1942) 20 Cal.2d 56, "it is an unquestioned rule of evidence that when any witness admits bias and prejudice on cross-examination, on redirect the reasons for

⁶ Counsel apparently meant to refer to A.'s statements that defendant abused him.

such prejudice cannot be gone into, at least where such reasons involve other alleged offenses outside the issue." (*Id.* at p. 63.)

The People contend defendant's argument "overlooks" that A.'s "general reference to pornography did not involve illegal conduct." In reply, defendant asserts that the rule "is not limited to evidence of prior criminal conduct," but all of the cases he cites did, in fact, involve such conduct. (See *People v. Zemavasky*, *supra*, 20 Cal.2d at p. 63 [redirect examination elicited that the witness saw the defendant "in the court charged with omitting to provide for three minor illegitimate children"]; *People v. Pierce* (1969) 269 Cal.App.2d 193, 205 [redirect examination elicited that "defendant had almost killed [the witness's] mother on other occasions by beating her until she was unable to stand"]; *People v. Morris* (1988) 46 Cal.3d 1, 38-39 [redirect examination elicited evidence of a "prior homicide"].)

In any event, even if we assume the trial court abused its discretion in refusing to strike A.'s testimony about defendant possessing pornography (see *People v. Pierce*, *supra*, 269 Cal.App.2d at p. 205 ["Under the Evidence Code the rule is properly addressed to the trial court's discretion"]), defendant has failed to make the requisite showing of prejudice.

Error in the admission of evidence warrants reversal only if it is reasonably probable a result more favorable to the appellant would have been reached in the absence of the error. (*People v. Mullens* (2004) 119 Cal.App.4th 648, 658-659.) Here,

defendant makes no effort to persuade us that it is reasonably probable he would have obtained a better result if A.'s testimony about him possessing pornography had been stricken. Defendant briefly asserts that "[i]n a close credibility contest, errors that tip the balance against the defendant in the assessment of credibility are not harmless," but he fails to explain how A.'s isolated reference to his possession of pornography, particularly in a trial in which the testimony stretched over 19 days, could have "tip[ped] the balance against [him] in the assessment of credibility."⁷ Absent a persuasive showing that the alleged error was prejudicial, we must conclude it was not.

B

Exclusion Of Handwriting Expert

S. testified that defendant's story about the molestation "changed on a daily basis" and that to keep up with the changes she would make notes. At one point, she said that defendant "would dictate and make me write notes as he was reading through these books."

During defendant's case, the prosecutor told the court outside the presence of the jury that she was going to challenge an expert witness defendant intended to call to testify that

⁷ In fact, the sentence that follows in defendant's opening brief is lifted in its entirety from another section of the brief dealing with a different subject altogether (S.'s testimony and the absence of an accomplice instruction).

S.'s writings did not show any signs of stress or duress.⁸ After hearing initial arguments on the matter, the court decided it would hold an Evidence Code section 402 hearing on the admissibility of the testimony.

At that hearing, Marcel Matley testified that he had been an examiner of documents and handwriting since 1985. Matley testified that his experience embraced "[a]lmost every aspect of document examination," including whether the writing "show[s] influence of something that was happening at the time it was writ[ten]." Matley testified that while he had qualified as an expert witness "either 71 or 72 times in courts of law," he had qualified only once as an expert on handwriting stress analysis, although he had testified on that issue in at least three other cases.

In explaining the theory behind handwriting stress analysis, Matley said that while some people are not affected by threats, others feel threatened, and the resulting stress manifests itself in the tightening of muscles, which can inhibit the person's writing. This can result in slower writing with heavier pressure and less continuity. The letters and the spaces between them become narrower, and the spaces between lines (on unlined paper) might become narrower also.

To determine whether a particular writing shows signs of being written under stress, Matley compares it to other writings

⁸ We will occasionally refer to this subject as handwriting stress analysis.

by the same person. If all the writings appear the same, then it may simply be the person's "habit to write stressfully." Matley explained that in doing his analysis, "ideally [he] ha[s] a set of writings that everyone agrees are normal."

At the conclusion of his direct examination of Matley, defendant offered an exhibit that contained three documents⁹ written by S. that Matley had examined for signs of stress. Matley later explained that he had been told it was disputed as to whether the three documents were written under stress, in other words, there was no agreed upon "normal" writing sample.

Matley admitted that if a person was chronically under stress, it would be "beyond the expertise of a forensic handwriting examiner" to determine whether a particular writing was written under stress or duress because "it is something chronic, habitual; it is not an acute thing."

On examination by the court, Matley stated that because he did not have an agreed-upon normal writing sample, his opinion would address "[t]he degree of spontaneity versus stress and then a balance between the two" as to all three documents.

Following Matley's testimony, the prosecutor argued that stress analysis was "not an accepted practice or science" and "there's nothing to back it up." Defendant argued that his testimony should be allowed because Matley had compared the 15 pages of "writings that have been referenced by [S.] . . . as

⁹ Defendant later clarified that the first document was actually a set of documents consisting of 15 pages.

being written during this time period when [defendant] was allegedly forcing her to write diaries about the issue in question during that time period" with "the Lisa Taylor letter where she wanted to get out of prostitution, get out of the cult movement, get out of the incest and was breaking away" and with "a journal" S. wrote "for Detective Strasser" "after [defendant's] arrest." According to defendant, Matley would testify that "there was no stress or duress" in the writings from the time period when he was allegedly "forcing her to write diaries," that the Lisa Taylor letter was "a normal writing," and that the journal S. wrote for Detective Strasser was "the one document that she is extremely stressed in."

In ruling on the issue, the court first expressed concern that Matley "spends 80 to 90 percent of his time I.D.'ing who the particular writer of a document was." As for handwriting stress analysis, the court was concerned that Matley had "very few cases where he's testified as an expert" and "if you don't have a known sample which you can clearly say was written under no stress or duress, I don't see how there's much validity to the conclusion." The court later explained in more detail that "unless you do have a clean sample where you can say this is a pristine example of someone who wrote a document not under stress" and all the expert can say is "this looks like it is written under more stress, this least stress," "How is that going to help the jury in the ultimate resolution?" The court then expressed concern about the validity of handwriting stress

analysis as a discipline, saying, "That all does sound like hocus-pocus to me."

At defendant's request, the court allowed Matley to be recalled to the stand. Matley explained that he does not need a "clean sample" to determine whether a writing appears to have been written under stress. Instead, he asserted he could look at a writing and determine from that writing alone whether it "has the elements . . . the person's uptight while they're writing." The purpose of using a sample of "normal" writing for comparison is to see if the stress is "outside the norm." Matley then explained his conclusions about the writing samples from S. He concluded the 15 pages were "characterized by spontaneity" and he did not "find any aspects of these documents being written under stress or duress." He concluded the Lisa letter was "[n]either characterized by characteristics of stress nor by characteristics of spontaneity." Finally, he concluded that in the journal written for Detective Strasser, "the characteristics of stress dominate versus the characteristics of spontaneity." Matley admitted that he could determine whether a writing showed signs of being written under stress, but he could not determine whether duress was the cause of the stress.

In further argument on the admissibility of Matley's proposed testimony, defense counsel argued that "he's clearly within accepted expert boundaries to be able to testify that this type of writing has these characteristics showing stress," and "a comparison" showing that "[t]his particular writing was

written under more stress than this one, or this one under less stress" "is still of great value to the [jury.]"

The court ultimately determined that while Matley had "some expertise" in the area of handwriting stress analysis, his testimony would "not assist the jury in any material way sufficient to warrant his testimony," and consequently the court ruled Matley would not testify.

In his new trial motion, defendant argued that the court had erred in excluding Matley's testimony. In denying that aspect of defendant's motion, the court explained that "in essence, in substance, [the court] was making a[n Evidence Code section] 352 ruling in" excluding Matley's testimony. The court asserted that the probative value of Matley's proposed testimony was weak because Matley could not "say whether duress was the cause of the stress" that might have been reflected in S.'s writing, and thus his testimony about all the factors that go into determining whether someone is writing under stress would have "occup[ied] undue consumption of time and distract[ed] the jury on irrelevant issues."

On appeal, defendant contends "[t]he court erred in refusing to permit [Matley] to testify concerning handwriting stress analysis" because his testimony "would have been relevant and highly probative." We find no error.

"In determining whether to admit expert testimony, the trial court has broad discretion, and we may not interfere with that discretion unless it is clearly abused." (*People v. Bui* (2001) 86 Cal.App.4th 1187, 1196.) Indeed, "an appellate court

applies the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence," including a ruling under Evidence Code section 352. (*People v. Waidla* (2000) 22 Cal.4th 690, 724.)

Here, as the trial court explained in ruling on defendant's new trial motion, the court excluded Matley's testimony because the court determined that whatever probative value Matley's testimony might have was outweighed by other factors cognizable under Evidence Code section 352,¹⁰ namely, "undue consumption of time and distract[ion of] the jury on irrelevant issues." (See Evid. Code, § 352.) We find no abuse of discretion in that ruling. The trial court reasonably determined that Matley's testimony would have little probative value because while Matley could testify that certain writings by S. showed or did not show signs of having been written under stress, he could not "say whether duress was the cause of the stress." Weighed against that small probative value was "undue consumption of time" the court concluded would be required for Matley to testify about all the factors that go into determining whether someone is writing under stress.

"[T]he term judicial discretion "implies absence of arbitrary determination, capricious disposition or whimsical

¹⁰ "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352.)

thinking.'" [Citation.] '[D]iscretion is abused whenever the court exceeds the bounds of reason, all of the circumstances being considered.'" (*People v. Mullens* (2004) 119 Cal.App.4th 648, 658.) Here, defendant has failed to demonstrate the court's ruling excluding Matley's testimony exceeded the bounds of reason. Accordingly, no abuse of discretion has been shown.

As for defendant's suggestion that the trial court's ruling violated his federal constitutional rights, the following passage suffices to answer that suggestion: "Application of the ordinary rules of evidence, such as Evidence Code section 352, generally does not deprive the defendant of the opportunity to present a defense [citation]; certainly the marginal probative value of this evidence does not take it outside the general rule." (*People v. Snow* (2003) 30 Cal.4th 43, 90.)

IV

Instructional Errors

A

Unanimity Instruction For Torture

Defendant contends the trial court erred in failing to give a unanimity instruction on the charge of torture. As we have explained already, however, torture can be committed by a course of conduct, and here the prosecution proceeded on the theory that defendant committed the crime of torture against S. by a course of conduct between June 2003 and February 2004. Thus, under the course of conduct exception to the election/unanimity requirement, no unanimity instruction was required.

Defendant contends that "[e]ven if a statute creates a continuous course of conduct offense, a unanimity instruction is nonetheless required if the evidence offered to prove the offense shows multiple separate and discrete criminal events." Thus, for example, in *People v. Sanchez*, *supra*, 94 Cal.App.4th at page 622, a unanimity instruction was required on a charge of animal abuse where that charge was based on "evidence of two separate incidents in which [the] defendant kicked a dog during the period of time charged in the information." (*Id.* at p. 634.)

Defendant contends this case is like *Sanchez* "because the prosecutor offered a number of separate and discrete acts which could support a conviction for torture." More specifically, defendant asserts that "[i]n arguing for a torture conviction, the prosecutor told jurors how [defendant] injured [S.] on various occasions over the nine month period" charged in the information, and "[t]here were many separate and discrete acts which could have inflicted great bodily injury." Under these circumstances, defendant contends, "a unanimity instruction was necessary to ensure a unanimous jury verdict."

This court rejected a similar argument in *Sanchez*. Although a unanimity instruction was required in *Sanchez* on the animal abuse charge that was based on evidence of two discrete instances when the defendant allegedly kicked a dog, the court concluded no unanimity instruction was required on other animal abuse charges that were based on evidence the defendant "failed to provide adequate food and water for [certain] animals on an

ongoing basis" and "failed to provide any medical treatment for a puppy that was severely wounded." (*People v. Sanchez, supra*, 94 Cal.App.4th at p. 634.) The defendant argued a unanimity instruction was required on those charges "because the prosecution distinguished between various incidents of animal abuse," but this court rejected that argument because it was "based on a misunderstanding of a continuous-course-of-conduct offense. By its very nature, [such an offense] is established by proof that the conduct took place repeatedly throughout the charged period of time." (*Id.* at p. 635.) Thus, proof of a course of conduct offense will usually consist of evidence of various incidents occurring over a period of time. However, where those incidents can reasonably be found to constitute a course of conduct, and the prosecution charges the crime as a course of conduct, no unanimity instruction is required. In such a case, "the multiple acts constitute one discrete criminal event." (*People v. Sanchez, supra*, 94 Cal.App.4th at p. 631.)

Because that was the case here with the charge of torture, the trial court did not err in failing to give a unanimity instruction on that charge.

B

CALJIC No. 2.51

At the apparent request of both parties, the trial court instructed the jury with CALJIC No. 2.51, as follows: "Motive is not an element of the crime charged and need not be shown. However, you may consider motive or lack of motive as a circumstance in this case. [¶] Presence of motive may tend to

establish the defendant is guilty. Absence of motive may tend to show the defendant is not guilty."

The court also instructed the jury on the crime of torture in part as follows: "Every person who, with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, persuasion, or for any sadistic purpose, inflicts great bodily injury upon the person of another, is guilty of the crime of torture" This instruction was consistent with the statutory definition of the crime.¹¹ (§ 206.)

Defendant contends the requirement that great bodily injury be inflicted for a certain "purpose" "creates a motive element of the offense" of torture, and "[i]t is error to give CALJIC No. 2.51 in a case where motive is an element." The People contend that notwithstanding the purpose language in section 206, motive is not an element of the crime of torture, and, in any event, any error was invited. As we will explain, we agree with the People's first argument. Because motive is not an element of the crime of torture, the trial court did not err in instructing the jury with CALJIC No. 2.51.

Our conclusion flows from *People v. Lynn* (1984) 159 Cal.App.3d 715, which involved the crime of first degree murder by torture. Under section 189, "All murder which is perpetrated by . . . torture, or by any other kind of willful, deliberate,

¹¹ The instruction the court gave omitted the word "extortion," which is included in the statute, presumably because the People did not contend defendant acted with the intent to cause S. pain for that purpose.

and premeditated killing . . . is murder of the first degree." More than 50 years ago, our Supreme Court explained that "[i]n determining whether the murder was perpetrated by means of torture the solution must rest upon whether the assailant's intent was to cause cruel suffering on the part of the object of the attack, either for the purpose of revenge, extortion, persuasion, or to satisfy some other untoward propensity." (*People v. Tubby* (1949) 34 Cal.2d 72, 77.) Thus, it has long been said that "[t]he essential elements of the crime are: "' . . . (1) the act or acts which caused the death must involve a high degree of probability of death, and (2) the defendant must commit such act or acts with the intent to cause cruel pain and suffering for the purpose of revenge, extortion, persuasion or for any other sadistic purpose.'" (*People v. Davenport* (1985) 41 Cal.3d 247, 267; see also *People v. Whisenhunt* (2008) 44 Cal.4th 174, 201.)

In *Lynn*, the defendant argued it was prejudicial error to instruct the jury with CALJIC No. 2.51 when the trial court also instructed the jury in the language of the standard murder by torture instruction (CALJIC No. 8.24) that one of the essential elements of the crime was that the defendant acted with the intent to cause cruel pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose. (*People v. Lynn, supra*, 159 Cal.App.3d at pp. 727-728.) The appellate court rejected that argument, concluding that the "purpose" language in the instruction "does not elevate motive to the status of an element of torture murder. Rather, as

CALJIC No. 2.51 instructs, the presence or absence of motive remains a circumstance in the case which may tend to establish guilt or innocence. CALJIC No. 8.24 simply makes explicit the treatment of motive as an element of proof in torture murder cases rather than as an element of the crime. The instruction does not change the treatment of motive from that in other first degree murder cases. [Citation.] Thus, the trial court committed no error in instructing on motive." (*People v. Lynn*, *supra*, 159 Cal.App.3d at p. 728.)

Defendant contends *Lynn* is distinguishable because with respect to the crime of torture, as opposed to the crime of murder by torture, "the language requiring an intent to cause cruel pain and suffering 'for the purpose of revenge, extortion, persuasion or for any sadistic purpose' [is] codified into the statute [§ 206] as part of the definition of the offense" and therefore can "no longer be dismissed as an element of proof . . . rather than as an element of the crime." We are not persuaded. The "purpose" language at issue here may not appear in the statute that makes murder by torture a crime (§ 189); nevertheless, case law from our Supreme Court long ago established that such a purpose is an "essential element" of the crime of murder by torture. (See *People v. Davenport*, *supra*, 41 Cal.3d at p. 267, italics added.) Thus, *Lynn* stands for the proposition that motive is not an element of the crime of murder by torture, even though one of the essential elements of that crime is that the prohibited act be committed with the intent to cause pain for a specific purpose.

Recently, in *People v. Whisenhunt*, *supra*, 44 Cal.4th at page 174, our Supreme Court approved the *Lynn* court's analysis of this issue. In *Whisenhunt*, the defendant contended CALJIC No. 2.51 "had the effect of negating the element of 'sadistic purpose' in the first degree murder by torture instruction, CALJIC No. 8.24" and, acknowledging that his argument had been rejected already in *Lynn*, asked the Supreme Court to disapprove *Lynn*. (*People v. Whisenhunt*, *supra*, 44 Cal.4th at p. 218.) The Supreme Court refused to do so because the court "conclude[d] *Lynn* correctly decided this issue As [the Supreme Court had] noted in rejecting another similar challenge to CALJIC No. 2.51, 'although malice and certain intents and purposes are elements of the crimes, . . . motive is not an element.' (*People v. Hillhouse* (2002) 27 Cal.4th 469, 503-504, [117 Cal.Rptr.2d 45, 40 P.3d 754].) 'Motive describes the reason a person chooses to commit a crime. The reason, however, is different from a required mental state such as intent or malice.'" (*Whisenhunt*, at p. 218.)

There is no principled basis on which to distinguish between the crime of torture and the crime of murder by torture on this point. One of the elements of both crimes is that the perpetrator commit the prohibited act with the intent of causing pain for a particular purpose. If, as held in *Lynn* and *Whisenhunt*, motive is not an element of torture by murder, then similarly it is not an element of torture. Accordingly, the trial court did not err in instructing the jury with CALJIC No. 2.51.

Lesser Included Offenses

Defendant contends the trial court erred in failing to instruct on three different lesser included offenses. We address each of those offenses in turn.

1. *Attempted Torture*

Defendant contends the trial court should have instructed the jury on attempted torture as a lesser included offense of torture. We disagree.

In any criminal prosecution, "The jury . . . may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged, or of an attempt to commit the offense." (§ 1159.) Thus, where there is evidence that would absolve the defendant from guilt of the charged offense but would support a finding of guilt of attempt to commit the charged offense, an instruction on attempt is mandatory. (See *People v. Crary* (1968) 265 Cal.App.2d 534, 540.)

What that means here is that if the evidence was susceptible to the reasonable interpretation that defendant was guilty of attempted torture, but not the completed crime, the trial court had a duty to instruct the jury on attempt. Defendant contends that was the case because "there was . . . an arguable basis to doubt whether the act or acts [of violence he committed against S.] succeeded in actually inflicting great bodily injury upon her." Defendant contends that "[a]lthough medical evidence showed that [S.] had rib fractures and a

fractured nose, the evidence did not clearly establish how these injuries occurred." Specifically, defendant points to evidence that S. told their daughter she broke her ribs falling over a skateboard. Defendant further contends there was evidence "that the bruising to [S.'s] face and body was not caused by [him], but was the result of an assault committed by Rock Clum." Finally, he asserts that while there was evidence he "struck [S.] in the head and body with a derringer in his ha[n]d as they drove through Roseville, . . . the evidence did not clearly establish that great bodily injury was inflicted . . . on that occasion."

In response, the People argue that a charge of attempted torture was not supported by substantial evidence because defendant "denied beating [S.], with the exception of slapping her one time and shoving a laundry basket at her in self-defense." According to the People, defendant "did not present any evidence suggesting that he acted with the requisite intent to commit torture, but simply failed to cause great bodily injury."

As defendant points out in his reply brief, however, the People "err[] by focusing only on evidence presented by the defense." The question here is not whether the jury reasonably could have found -- based only on defendant's evidence -- that he committed attempted torture but not the completed crime, but whether the jury could have made that finding based on *all* the evidence presented, including that presented by the People. (See *People v. Breverman* (1998) 19 Cal.4th 142, 162-163.)

Although the People's response to defendant's argument is unconvincing, we nonetheless reject defendant's argument that an instruction on attempted torture was required here. Defendant's argument rests on the premise that the jury reasonably could have found that he tried to torture S. but failed to complete the crime because his acts were not the cause of S.'s broken ribs, broken nose, and bruising over her face and body. In defendant's view, the jury could have found that, instead, the broken ribs were caused by an accidental fall over a skateboard, and the bruising was caused by an assault committed by Rock Clum. Defendant offers no specific alternate explanation for the broken nose.

For a sua sponte instruction on attempt to be required, however, there must be "evidence that a reasonable jury could find persuasive" on the point. (*People v. Barton* (1995) 12 Cal.4th 186, 201, fn. 8.) The evidence on which defendant relies is not such evidence. Essentially, the jury would have had to believe S.'s testimony that defendant hit her to persuade her to go along with his story about the molestation and the satanic cult, but at the same time believed that S.'s broken bones and other physical injuries were not caused by defendant's beatings but had other causes. Most significantly, to accept defendant's argument, the jury would have had to believe S.'s statement to police that a man she assumed was Rock Clum beat her. But at the same time S. made this statement to police, she told police that defendant never beat her. Thus, the jury would have had to believe the part S.'s statement to police that Rock

Clum beat her while at the same time disbelieving her statement to police that defendant never beat her. Because we are not persuaded a reasonable jury would have made these conflicting credibility determinations, we find no substantial evidence to support an instruction on attempted torture in this case.

2. *Assault By Means Of Force Likely To Produce Great Bodily Injury*

Defendant contends the trial court should have instructed the jury on assault by means of force likely to produce great bodily injury as a lesser included offense of torture. We disagree.

The trial court must instruct sua sponte on "lesser included offenses if the evidence 'raises a question as to whether all of the elements of the charged offense are present and there is evidence that would justify a conviction of such a lesser offense.'" (*People v. Lopez* (1998) 19 Cal.4th 282, 287-288.) "To determine whether a lesser offense is necessarily included in the charged offense, one of two tests (called the 'elements' test and the 'accusatory pleading' test) must be met. The elements test is satisfied when "all the legal ingredients of the corpus delicti of the lesser offense [are] included in the elements of the greater offense." [Citation.]' [Citations.] Stated differently, if a crime cannot be committed without also necessarily committing a lesser offense, the latter is a lesser included offense within the former. [Citations.] [¶] Under the accusatory pleading test, a lesser offense is included within the greater charged offense "if the charging

allegations of the accusatory pleading include language describing the offense in such a way that if committed as specified the lesser offense is necessarily committed." (Id. at pp. 288-289.)

Here, defendant argues that assault by means of force likely to produce great bodily injury is a lesser included offense of torture under the elements test because "[a]ny person who inflicts great bodily injury with the intent to torture is necessarily guilty of felony assault for use of force likely to produce great bodily injury." Not so. Torture requires actual infliction of great bodily injury, but the means of force used to inflict that injury is not an element of the crime. It is possible for a person to commit torture -- i.e., to inflict great bodily injury with the requisite intent and purpose -- by means of force that is not likely to produce great bodily injury, but nonetheless ends up doing so. Thus, torture can be committed without also committing assault by means of force likely to produce great bodily injury, and therefore the latter crime is not a lesser included offense of the former.

3. *Spousal Battery*

Defendant contends the trial court should have instructed the jury on spousal battery (also called misdemeanor spousal abuse) as a lesser included offense of inflicting corporal injury on a spouse (also called felony spousal abuse, even though it is actually a wobbler). We are not persuaded.

Defendant was convicted of three counts of inflicting corporal injury on a spouse in violation of section 273.5,

subdivision (a).¹² Spousal battery in violation of section 243, subdivision (e)(1)¹³ is a lesser included offense of inflicting corporal injury on a spouse. (*People v. Jackson* (2000) 77 Cal.App.4th 574, 580.)

Defendant contends the lesser offense of spousal battery was supported by substantial evidence -- and therefore the jury should have been instructed on that offense -- based on his own testimony regarding: (1) "the Super Bowl Sunday incident" (which was the basis for the inflicting corporal injury charge in count IX) and (2) the "laundry room" incident (which was the basis for the inflicting corporal injury charge in count XVII).¹⁴ Specifically, with regard to the Super Bowl Sunday incident,

¹² "Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both that fine and imprisonment." (§ 273.5, subd. (a).)

¹³ "When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment." (§ 243, subd. (e)(1).)

¹⁴ Because defendant offers no argument directed to the felony spousal abuse charge in count XIII, which was based on "the van ride," we do not address that charge further.

defendant suggests the jury could have convicted him of only spousal battery based on his testimony that he did not strike S. in the ribs with a knuckle punch but did slap her in anger. With regard to the laundry room incident, he suggests the jury could have convicted him of the misdemeanor based on his testimony that he did not strike S. but did deflect "a laundry basket into her face which aggravated a prior injury, causing her nose to bleed."

The People's response to this argument founders on a mistaken premise. The People contend we must reject defendant's argument because spousal battery is not "a necessarily lesser included offense of *torture*." (*Italics added.*) But that is not defendant's argument; his argument (as we have explained) is that spousal battery is a lesser included offense of inflicting corporal injury on a spouse -- and the People acknowledge that this is so. Having acknowledged this, however, the People do not address defendant's contention that the evidence justified an instruction on spousal battery as a lesser included offense of inflicting corporal injury on a spouse, rather than as a lesser included offense of torture.

Despite the People's failure to address defendant's actual argument, we conclude defendant has not carried his burden of showing that the trial court erred when it did not instruct the jury on spousal battery. As we have explained, the trial court must instruct *sua sponte* on "lesser included offenses if the evidence 'raises a question as to whether all of the elements of the charged offense are present and there is evidence that would

justify a conviction of such a lesser offense.'" (*People v. Lopez, supra*, 19 Cal.4th at pp. 287-288.) Given that it is defendant's burden, as the appellant, to show that the trial court erred (see, e.g., *People v. Alvarez* (1996) 49 Cal.App.4th 679, 694), it falls to him to explain -- with respect to both the Super Bowl Sunday incident and the laundry room incident -- how the evidence here raised a question as to whether all of the elements of inflicting corporal injury on a spouse were present and that there was evidence that would have justified a conviction of spousal battery instead.

Defendant offers no such explanation. While he quotes the spousal battery statute, he makes no attempt to explain the elements of that crime or to show how those elements were satisfied by his testimony regarding the two incidents. Further, he offers no discussion of the elements of inflicting corporal injury on a spouse and no discussion of how the evidence upon which he relies raised a question as to whether all of the elements of that crime were present. Instead, he summarily recounts, in two sentences, his testimony regarding the two incidents, and then asserts that the "lesser offenses were supported by substantial evidence." This is not sufficient to demonstrate trial court error; accordingly, we find none.

D

Accomplice Instruction

Defendant contends that because S. "participated in telling the children the same [upsetting] stories" that were the basis

for the child abuse charges against him, accomplice instructions should have been given. We find no error.

""[W]henver the testimony given upon the trial is sufficient to warrant the conclusion upon the part of the jury that a witness implicating a defendant was an accomplice,"" the trial court must instruct the jury, sua sponte, to determine whether the witness was an accomplice." (*People v. Zapien* (1993) 4 Cal.4th 929, 982.) Defendant contends there was evidence in the case that would have warranted a finding that S. was his accomplice in the abuse of the children because "[S.] actively participated in the same storytelling that was charged against [him]." Defendant acknowledges, however, that to be an accomplice, one must act with "consent," and not merely "assent." "Consent, in law, means a voluntary agreement by a person in the possession and exercise of sufficient mentality to make an intelligent choice, to do something proposed by another." (*People v. Dong Pok Yip* (1912) 164 Cal. 143, 147.) Assent, on the other hand, "means mere passivity or submission, which does not include consent." (*Ibid.*) Thus, for the jury to have found S. was defendant's accomplice, there must have been sufficient evidence for the jury to conclude that S. acted with consent, and not mere assent, when she told the children the same stories that defendant did.

Unfortunately, defendant does not address this issue. He acknowledges that it is for the jury to decide if the alleged accomplice acted with consent and not merely assent. (See, e.g., *People v. Olds* (1957) 154 Cal.App.2d 78, 82.) But he

fails to proceed to the next logical step, which is to show, based on the evidence in the record, that there was sufficient evidence for the jury to find that S. acted with consent, and not mere assent. Instead, he simply asserts that because it is for the jury to decide, "[i]t is clear . . . that the court erred in failing to give accomplice instructions." Such ipse dixit is not sufficient to demonstrate error. Absent a persuasive showing, based on the evidence, that a reasonable jury could have concluded S. acted with consent, we must conclude that defendant has failed to show error in the failure of the trial court to give the jury accomplice instructions.

E

CALJIC No. 2.20

The trial court instructed the jurors pursuant to CALJIC No. 2.20 with a nonexclusive list of factors they could consider in determining the believability of a witness. In doing so, the trial court omitted one of the optional paragraphs of the instruction, which tells the jury it can consider "[p]ast criminal conduct of a witness amounting to a misdemeanor."¹⁵ (See *People v. Fraser* (2006) 138 Cal.App.4th 1430, 1451, fn. 6.) Defendant contends this omission was prejudicial error because there was evidence S. knowingly made false reports of crimes to

¹⁵ Evidence of nonfelony conduct involving moral turpitude is relevant to the credibility of a witness because such conduct may suggest a willingness to lie. (*People v. Wheeler* (1992) 4 Cal.4th 284, 295.)

the police and the jurors should have been instructed they could consider this evidence in determining her credibility.

CALJIC No. 2.20 or its equivalent "should . . . always be given," although "those paragraphs thereof inapplicable under the evidence may be omitted." (*People v. Rincon-Pineda* (1975) 14 Cal.3d 864, 883-884.) A person who knowingly makes a false report of a crime to a peace officer is guilty of a misdemeanor. (§ 148.5.) Thus, evidence that S. knowingly made a false report of a crime to law enforcement was relevant to her credibility, justifying the inclusion of the paragraph from CALJIC No. 2.20 the trial court omitted.

The People do not deny there was evidence S. knowingly made false reports of crimes to law enforcement. Instead, the People contend that because there was "evidence indicating that [S.] made the false reports . . . because she was scared that [defendant] would kill her," "the evidence suggested that [S.] did not act with criminal intent, but rather under duress."

The People are mistaken. It is true duress can negate the intent or capacity to commit a crime. (*People v. Petznick* (2003) 114 Cal.App.4th 663, 676; see also § 26 ["All persons are capable of committing crimes except . . . [¶] . . . [¶] Persons . . . who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused"].) However, "Duress is an effective defense only when the actor responds to an immediate and imminent danger." (*People v. Heath* (1989) 207 Cal.App.3d 892,

900.) "Decisions upholding the duress defense have uniformly involved '"a present and active aggressor threatening immediate danger.'" [Citation.] A 'phantasmagoria of future harm' such as a threat of death to be carried out at some undefined time, will not diminish criminal culpability." (*Petznick*, at pp. 676-677.)

The evidence to which the People point does not support their assertion that S. made her false reports to law enforcement under duress, as we have explained that term above. In one instance in which she claimed she made false statements to law enforcement because she was "afraid," defendant was "out in the hall." In another instance, she asserted she lied to law enforcement because she was "scared of" defendant and "wanted to stay alive," but at the time she made those statements defendant was not present because he had been taken to the hospital after accidentally shooting himself. Thus, the People do not cite any evidence that would support a finding S. acted out of duress in making false statements to law enforcement.

We do agree with the People's argument, however, that even if the failure to include the omitted paragraph of CALJIC No. 2.20 was error, defendant has failed to show any prejudice from the error. Defendant's prejudice argument in his opening brief is perfunctory, asserting only that because it was a close case that "was in large part a credibility contest between [him] and [S.], . . . there is a reasonable chance," giving the omitted paragraph from CALJIC No. 2.20 would have resulted in his acquittal on all charges.

The problem with defendant's prejudice argument -- other than its brevity -- is this: Defendant takes the position that if the jurors had been instructed with the omitted paragraph of CALJIC No. 2.20 regarding past criminal conduct, it is reasonably probable they would have disbelieved more of S.'s testimony about what he did to her because they would have determined she was not credible due to the fact that she had made false statements to law enforcement. But to believe S. made false statements to law enforcement, the jurors would have had to believe S.'s trial testimony, because -- as defendant himself points out -- it was S. who testified at trial that her initial statements to law enforcement were false. In other words, to find S. was not credible pursuant to the omitted paragraph of CALJIC No. 2.20, the jury would have first had to find she was credible. No valid claim of prejudicial error can rest on such a contradiction. Accordingly, we find no prejudicial error in the omission of the paragraph of CALJIC No. 2.20 relating to past criminal conduct.

V

New Trial Motion

In moving for a new trial, defendant asserted three incidents of juror misconduct that he continues to argue on appeal. First, he asserted that during the first week of trial, Juror No. 63 said he thought a guilty verdict would be a "'slam dunk . . . a no-brainer.'" Second, he asserted that during deliberations the same juror told his fellow jurors that he had "performed an online search for definitions of 'great bodily

injury.'" Third, he asserted that Juror No. 32 had tried to bring a dictionary into the jury room during deliberations.

In a supplemental motion for new trial, defendant argued the trial court committed legal error in relation to the dictionary incident because the bailiff told the court that he had stopped a juror from bringing a dictionary into the jury room, but the court never notified or advised the defense about this incident.

We address each of these arguments below.

A

Juror Misconduct

1. *Predeliberation Statement*

In support of his new trial motion, defendant offered a declaration from Juror No. 151, who attested that during the first week of trial, Juror No. 63 "stated that he thought that a guilty verdict would be a 'slam dunk...a no brainer'. This statement was made long before the end of testimony and long before the jury began its deliberations." Defendant argued that this evidence showed Juror No. 63 had prejudged his guilt and was not impartial and unprejudiced.

In response, the People offered declarations from two other jurors who attested that they either did not hear or did not recall hearing any juror make a statement regarding defendant's guilt or innocence before deliberations. The People also argued that "the jury verdicts in this case fly in the face of this alleged statement since the jury, in fact, returned a number of not guilty verdicts."

In ruling on this aspect of the new trial motion, the court pointed out that "there is really no context for [Juror No. 63's] remarks other than what . . . (Juror No. 151) said in her affidavit. . . . And we don't know if he was joking. We don't know if he was speculating out loud, we don't know if there are any qualifiers like: A guilty verdict would be a slam dunk if there is no other evidence presented. [¶] It is just a dangling remark by . . . (Juror No. 63) that is inadequate to show misconduct." The court also concluded that because Juror No. 12 had voted with the rest of the jurors in "return[ing] seven not guilty charges" and in "not find[ing] great bodily injury allegations of certain specific counts to be true," "it is pure speculation to conclude that those predeliberation remarks indicate he had a preexisting bias that continued throughout the trial and prejudiced the case."

The court also addressed itself directly to Juror No. 151, who was apparently in attendance, and stated, "With all due respect, . . . I think you have a bias or interest in seeing that the new trial motion [is] granted, and in my view your affidavit raises serious credibility problems." The court went on to discuss how in a supplemental declaration Juror No. 151 claimed essentially that Juror No. 32 "said he had made up his mind about guilt prior to the completion of trial." The court pointed out that in his own declaration, Juror No. 32 essentially said "he reached verdicts only after discussing the evidence with the other jurors" and "[h]e listened to all the evidence before the verdicts were reached." The court said that

"insofar as there is a conflict in the affidavits, then regrettably this Court must seriously question the credibility of" Juror No. 151. The court also noted that Juror No. 151 was "now . . . telling the Court that she was pressured to vote guilty, she would not vote that way now, and she considers a life sentence unfair."¹⁶ The court questioned Juror No. 151's credibility in light of the fact that "she didn't point out to [the court] that she felt pressure when she affirmed her guilty verdict in court." The court concluded by saying that "[f]or all these reasons, the Court cannot accept . . . (Juror No. 151's) rendition of the facts about . . . (Juror No. 32['s]) or . . . (Juror No. 63['s]) remarks or conduct. And in light of that fact, the defense has not shown either misconduct or prejudice" and "I do not for all those reasons think an evidentiary hearing is warranted or that the claim has been established."

In his opening brief, defendant argues that Juror No. 63's statement constituted misconduct. What he fails to address, however, is the fact that Juror No. 151 was the only person who attested to the statement by Juror No. 63, and the trial court

¹⁶ In her original declaration, Juror No. 151 stated that she "felt pressure to vote guilty, particularly on the torture charge" and "[i]f [she] were able to vote again, [she] would not vote for guilty." She also asserted her understanding that defendant "will be sentenced to life in prison if the torture conviction stands" and her belief "that a life sentence is not a fair punishment in this case."

expressly refused to accept Juror No. 151's "rendition of the facts" because the court found Juror No. 151 was not credible.

In his reply brief, defendant addresses this issue for the first time. Citing *People v. Nesler* (1997) 16 Cal.4th 561, 582, for the proposition that an appellate court "accept[s] the trial court's credibility determinations and findings on questions of historical fact if supported by substantial evidence," defendant argues there was no substantial evidence to support the trial court's finding that Juror No. 151's allegations of misconduct by Juror No. 63 were not credible (assuming the court implicitly made such a finding).

Under California law, "The power to judge the credibility of witnesses and to resolve conflicts in the testimony is vested in the trial court" (*In re Carpenter* (1995) 9 Cal.4th 634, 646.) "It is an established principle that the credibility of witnesses and the weight to be given their testimony are matters within the sole province of the trier of fact" (*As You Sow v. Conbraco Industries* (2005) 135 Cal.App.4th 431, 454, italics added.) "A trier of fact may accept such witnesses as he wishes and reject others." (*Green Trees Enterprises, Inc. v. Palm Springs Alpine Estates, Inc.* (1967) 66 Cal.2d 782, 787.) "Where there is conflicting testimony, reviewing courts recognize that the trier of the facts has the better opportunity to judge the credibility of witnesses. In such a case the trial court's findings of fact, to the extent that they rest upon an evaluation of credibility, should be regarded as *conclusive* on appeal." (*Estate of Fries* (1965) 238 Cal.App.2d 558, 561,

italics added.) "[S]o long as the trier of fact does not act arbitrarily and has a rational ground for doing so, it may reject the testimony of a witness even though the witness is uncontradicted. [Citation.] Consequently, the testimony of a witness which has been rejected by the trier of fact cannot be credited on appeal unless, in view of the whole record, it is clear, positive, and of such a nature that it cannot rationally be disbelieved." (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1204-1205.)

Here, the trial court -- which was the trier of fact for purposes of defendant's attempt to establish juror misconduct as a basis for a new trial -- rejected Juror No. 151's assertion that Juror No. 63 made a statement during the early stages of the trial that showed he had prejudged the case based on what the court characterized as Juror No. 151's "serious credibility problems." The court's credibility assessment was not arbitrary or irrational, but instead was based on the fact that Juror No. 151's declaration conflicted with the declaration filed by Juror No. 32 on various points and on the fact that Juror No. 151 was now taking a position on defendant's guilt contrary to the way she voted at trial.

Defendant attempts to discount the trial court's reasoning, contending that a careful examination of the declarations shows there was no conflict and that a "change of heart after learning of the severity of [defendant's] sentence does not provide a rational reason to question [Juror No. 151's] credibility." We are not persuaded on either point.

First, Juror No. 151 plainly asserted in her supplemental declaration that "[a]fter verdicts were reached and just before going into court for the reading of those verdicts, [Juror No. 32] made a blanket apology to the group of jurors, saying that he knew he had been unpleasant to some people and that those people knew who they were. He also said that he had opinions prior to the completion of the trial that he stated and he knew he shouldn't have done that. He said that he had his mind made up 'ahead of time.'" In his declaration, Juror No. 32 just as plainly asserted that he "listened to all of the evidence in this case before forming any opinion as to [defendant]'s guilt or innocence" and "never expressed an opinion about his guilt or innocence prior to the start of deliberations." Juror No. 32 admitted "apologiz[ing] to the group of jurors early on in deliberations," but specifically denied that the apology was made "right before we went into the courtroom for reading of the verdicts." On these facts, the trial court was entitled to conclude the declarations were in conflict and that Juror No. 151's credibility was therefore subject to question.

Second, on this record the trial court was entitled to conclude that Juror No. 151 was suffering more than simply a "change of heart after learning of the severity of [defendant's] sentence," as defendant characterizes it. The trial court could rationally conclude that Juror No. 151 was trying to impeach her own verdict by asserting she was pressured into voting guilty and would not do so again if given the opportunity. Furthermore, the trial court could rationally conclude that

Juror No. 151 had "a bias or interest in seeing that the new trial motion be granted" given her expressed view that a life sentence for torture would not be "fair."

Defendant contends that "[i]f the court had questions about Juror No. 151's credibility, that was an issue that could only be resolved at an evidentiary hearing." The authority he cites, however, does not support that proposition. In *People v. Hedgecock* (1990) 51 Cal.3d 395, our Supreme Court held that "when a criminal defendant moves for a new trial based on allegations of jury misconduct, the trial court has discretion to conduct an evidentiary hearing to determine the truth of the allegations. We stress, however, that the defendant is not entitled to such a hearing as a matter of right. Rather, such a hearing should be held only when the trial court, in its discretion, concludes that an evidentiary hearing is necessary to resolve material, disputed issues of fact." (*Id.* at p. 415.) Thus, it is within the trial court's discretion to determine whether an evidentiary hearing is necessary, even when there are conflicts in the declarations. Here, the trial court determined that an evidentiary hearing was not necessary, and defendant has shown no abuse of discretion in that determination.

Finally, defendant argues that reviewing courts defer to credibility determinations by trial courts in ruling on issues of juror misconduct only "because the 'trial court [is] in the best position to observe [the juror's] demeanor,'" and therefore "there is no reason to give deference to credibility determinations that did not result from an actual hearing."

Defendant does not cite any authority establishing that deference to the trial court's credibility determinations is justified only when there has been an evidentiary hearing in which live witnesses testify. Regardless of whether Juror No. 151 took the witness stand, the trial court was indisputably in a better position than we are to assess her demeanor, in that the trial court had the opportunity to observe her not only throughout trial, but also at the hearing on defendant's new trial motion, where the court directed comments directly to her. In any event, even if we did not defer to the trial court's credibility determination, we would nonetheless agree with the court that the conflict in the jurors' declarations and Juror No. 151's "recantation and inconsistent positions" regarding defendant's guilt provided a rational basis for the court to find that Juror No. 151's assertion regarding the statement made by Juror No. 63 -- which no other juror verified -- was not sufficiently credible to warrant a finding of misconduct. Consequently, we find no error in the trial court's denial of the new trial motion on this basis.

2. *Online Search*

In support of his new trial motion, defendant offered the declarations of three jurors who attested that during deliberations Juror No. 63 told his fellow jurors that he had performed an online search for definitions of "great bodily injury" but came up with no information as a result of the search. The trial court found that Juror No. 63 committed misconduct by doing the online search, but also noted that it

was "undisputed that no information was conveyed to . . . the other jurors" and there was "no . . . affirmative evidence that . . . (Juror No. 63) learned anything himself." Because the court concluded it was "pure speculation that he did learn anything," the court concluded the presumption of prejudice arising from the misconduct was "rebutted here."

On appeal, defendant contends the trial court erred in finding the presumption of prejudice was rebutted. Defendant argues that once the court found misconduct, the "presumption of prejudice could be rebutted only by proof that no prejudice actually resulted. The court could not deny relief by finding the issue of prejudice too speculative."

We find no error. "As a general rule, juror misconduct 'raises a presumption of prejudice'" (*In re Hitchings* (1993) 6 Cal.4th 97, 118.) "This presumption of prejudice 'may be rebutted by an affirmative evidentiary showing that prejudice does not exist or by a reviewing court's examination of the entire record to determine whether there is a reasonable probability of actual harm to the complaining party [resulting from the misconduct]. . . .'" (*Id.* at p. 119, italics added.)

Here, the only evidence before the trial court was that while Juror No. 63 attempted to find a definition of "great bodily injury" online, *he came up with no information.*¹⁷ This

¹⁷ Defendant points to a statement by one of the jurors claiming that Juror No. 63 said he "'couldn't find any definitive information.'" (Italics omitted.) That statement

fact itself tends to rebut the presumption of prejudice because it supports the reasonable conclusion that no actual harm occurred from the search because no information was actually received from an extraneous source as a result of the search.

Defendant argues that "[u]nless a computer crashes before the search can go through, it is impossible to conduct an internet search of 'great bodily injury' and obtain no results at all." Thus, in defendant's view, despite Juror No. 63's assertion to the other jurors that he came up with no information, he "must have looked at something," and because "[t]he People failed to show what he actually found," the presumption of prejudice was not rebutted.

We are not persuaded. "[W]hen misconduct involves the receipt of information from extraneous sources, the effect of such receipt is judged by a review of the entire record, and may be found to be nonprejudicial. The verdict will be set aside only if there appears a substantial likelihood of juror bias. Such bias can appear in two different ways. First, we will find bias if the extraneous material, judged objectively, is inherently and substantially likely to have influenced the juror. [Citations.] Second, we look to the nature of the misconduct and the surrounding circumstances to determine whether it is substantially likely the juror was actually biased against the defendant. [Citation.] The judgment must be set

was not evidence, however, as it was contained in an unsworn letter to the trial judge rather than in a sworn declaration.

aside if the court finds prejudice under either test." (*In re Carpenter, supra*, 9 Cal.4th at p. 653.)

Here, we cannot say that some unknown information Juror No. 63 may have seen while conducting an online search for a definition of "great bodily injury" is substantially likely to have influenced him in a manner detrimental to defendant. Likewise, we cannot say that the nature of the misconduct -- an attempt to find a definition for a term defendant himself admits has no special legal meaning -- viewed in light of the surrounding circumstances -- including Juror No. 63's statement to other jurors that he came up with no information as a result of the search -- suggests a substantial likelihood that Juror No. 63 was actually biased against defendant.

For the foregoing reasons, we conclude the trial court did not err in finding the presumption of prejudice was rebutted and in denying defendant's new trial motion on this basis.

3. *Attempted Use Of Dictionary*

In support of his new trial motion, defendant offered the declaration of a defense investigator, who attested that she had spoken with Juror No. 32, who told her that "he brought a regular or legal dictionary with him to court for use in deliberations" and "asked the bailiff if he could bring the dictionary into the jury room and was told he could not do that" so he "put the dictionary back in his jacket pocket."

In his own declaration, Juror No. 32 admitted that "[a]t the beginning of deliberations [he] asked a bailiff if it would be appropriate to have a dictionary in the jury room. [He] was

told it would not be appropriate and the dictionary was never used."

The trial court found that what Juror No. 32 did was improper, but because he "never used the dictionary" and "[n]o other juror says he brought forth any other information that he may have gained outside court," it was "minor or trivial misconduct" that "clearly does not show any prejudice or the presumption of prejudice is rebutted."

On appeal, defendant asserts that Juror No. 32's declaration "did not identify the actual dictionary that he tried to take into the deliberation room" and "does not state th[at] he himself did not up look up [a] definition," "[a]nd if he did . . . , it is impossible to determine from the record the actual definition that he looked at." Based on this, defendant apparently contends the presumption of prejudice was unrebutted.

Defendant is mistaken. Even assuming that evidence a juror *tried* to bring, but did not succeed in bringing, a dictionary into the deliberation room constitutes evidence of juror misconduct, the record here rebuts any presumption of prejudice. It is undisputed that upon being told he could not use the dictionary, he made no attempt to use it. Accordingly, he received no information from an extraneous source, and there is no reasonable probability of actual harm to defendant.

B

Denial Of Counsel

In a supplemental new trial motion, defendant argued the trial court committed legal error because the trial court did

not notify or advise the defense about the dictionary incident when it happened. At the hearing on the motion, the court admitted "that was a mistake on my part. . . . I should have brought it to your attention But since there was nothing that affected the verdict as a result of my mistake, I think it was harmless error on my part."

On appeal, defendant contends the trial court's failure to advise the defense that Juror No. 32 had requested permission to bring a dictionary into the deliberation room was error from which a strong presumption of prejudice arises, and "[b]ecause the presumption of prejudice has not been rebutted, [he] is entitled to a new trial."

We are unpersuaded. In *People v. Hogan* (1982) 31 Cal.3d 815 (the case on which defendant primarily relies), our Supreme Court concluded that the defendant "was denied the right to counsel when the trial judge, without notifying counsel, responded to jury requests to see various trial exhibits during deliberations." (*Id.* at p. 848.) The court further noted that "if the denial of the right to counsel during jury deliberations may have affected substantial rights of a defendant, prejudice is presumed and '[o]nly the most compelling showing to the contrary will overcome the presumption.'" (*Id.* at p. 849.)

This case is distinguishable from *Hogan*. In *Hogan*, it was clear that the denial of the right to counsel affected the substantial rights of the defendant because the trial court sent all of the requested exhibits to the jury room, including a tape recording that included "inadmissible and highly prejudicial

material concerning [the defendant]'s reluctance to take a lie detector test [that] would never have reached the jury" otherwise. (*People v. Hogan*, *supra*, 31 Cal.3d at pp. 844-845, 850.) Thus, the presumption of prejudice was entirely justified (and un rebutted). Here, on the other hand, defendant does not attempt to explain how the trial court's failure to contact the defense affected his substantial rights, when by the time the court first learned of the matter the bailiff had already told the juror he could not use a dictionary, and the juror did not, in fact, use it. Under the circumstance of this case, as opposed to those in *Hogan*, we see no basis for presuming prejudice.

This case is more akin to *People v. Garrison* (1989) 47 Cal.3d 746 than it is to *Hogan*. In *Garrison*, the trial court responded to a jury request for the rereading of a defense witness's testimony without consulting with defense counsel, whom the court was unable to locate. (*Id.* at p. 783.) On the defendant's claim that he was denied the right to counsel, the Supreme Court pointed out that the testimony in issue was unquestionably favorable to the defendant and wrote, "It defies imagination to believe that any defense counsel would have disapproved of the jury rehearing the testimony of this very favorable witness. The trial court was undoubtedly aware of this when it granted the jury's request for the reread. Under the strictest test of prejudice, any error in rereading the . . . testimony in the absence of counsel is harmless beyond a reasonable doubt." (*Ibid.*)

The same can be said here: It defies imagination to believe that any defense counsel would have disapproved of what the bailiff told the juror -- that he could not bring the dictionary into the deliberation room. Thus, any error was harmless even under the strictest test of prejudice.

VI

Sentencing Issues

A

Imposition Of Upper Term

In imposing the upper terms on the criminal threat conviction and the three convictions for inflicting corporal injury on a spouse, the trial court noted that defendant's lack of a prior criminal record was a mitigating circumstance, but that circumstance was outweighed by several aggravating circumstances, namely: (1) defendant "induced others to participate in the commission of the crime or occupied a position of leadership or dominance of other participants in its commission"; (2) defendant "induced a minor to commit or assist in the commission of a crime against their [sic] mother"; (3) "the plan was carried out with planning, sophistication, and professionalism"; (4) defendant "took advantage of a position of trust or confidence to commit the crimes"; and (5) defendant "engaged in violent conduct, indicating [he is] a serious danger to society."

Defendant contends the trial court's imposition of the upper terms violated his federal constitutional rights under *Cunningham v. California* (2007) 549 U.S. 270 [166 L.Ed.2d 856]

because "there was no legally sufficient aggravating circumstance found to exist by the jury, admitted by the defendant, or justified based on defendant's record of prior convictions."

The People contend any *Cunningham* error was harmless because if the aggravating circumstances on which the trial court relied had been presented to the jury, the jury would have found three of those circumstances true beyond a reasonable doubt -- specifically, "the violence of the crimes, defendant's position of trust in the household, and the involvement of his minor sons in at least one criminal act." (See *People v. Sandoval* (2007) 41 Cal.4th 825, 839.) In making this argument, however, the People do not try to specifically tie any particular aggravating circumstance to any particular conviction on which the trial court imposed the upper term and explain how the evidence underlying that conviction unquestionably justified the aggravating circumstance the trial court found. Instead, the People paint with a broad brush, asserting -- for example -- that defendant "did not deny involving the children in every aspect of the lawsuit against [S.]'s father." But "the lawsuit against [S.]'s father" was not a crime of which defendant was convicted, and therefore this assertion does nothing to support the People's claim of harmless error in the trial court's imposition of the upper terms. The crimes at issue here are the criminal threat -- when defendant told S. he would kill her -- and three instances in which defendant inflicted corporal injury on S. -- to which we have referred before as the Super Bowl

Sunday incident, the laundry room incident, and the van ride. The People's broad assertions go nowhere toward establishing that defendant induced one or more of the children to commit or assist in the commission of one or more of *these* crimes in particular.

Notwithstanding the People's argument, we must consider, with respect to each of the four crimes at issue, whether "the jury, applying the beyond-a-reasonable-doubt standard, unquestionably would have found true at least [one of the] aggravating circumstance[s] that the trial court found true] had [those circumstances] been submitted to the jury." (*People v. Sandoval, supra* , 41 Cal.4th at p. 839.) Unless we can make this determination and be persuaded it is true beyond a reasonable doubt, we cannot find the *Cunningham* error harmless. (See *ibid.*) To assist in this task, we set forth the following brief summary of each of the offenses:

Criminal Threat (count VI)

This offense occurred when, while questioning S. about the slip of paper he found in her purse, defendant told her, "I'll kill you now."

Inflicting Corporal Injury On A Spouse (count IX)

This offense occurred when defendant hit S. in the ribs with his middle knuckle on Super Bowl Sunday.

Inflicting Corporal Injury On A Spouse (count XIII)

This offense occurred when defendant hit S. in the face and the side during the van ride.

Inflicting Corporal Injury On A Spouse (count XVII)

This offense occurred when defendant hit S. with his fists and various objects in the garage and in the laundry room.

1. *Participation Of Others*

We are aware of no evidence suggesting that defendant induced others to participate in the commission of any of the four crimes at issue here or that he occupied a position of leadership or dominance of other participants in the commission of those crimes. No one else was involved in threatening to kill S. and no one else was involved in the beatings he gave her. The closest the People come to hinting at any such evidence is their assertion that defendant "ask[ed] his sons to load the car and bring weapons on the night that the family drove to Rocklin" -- i.e., on the night of the van ride to Roseville, during which defendant hit S. in the face and side. The only evidence the People cite in support of this assertion, however, is defendant's testimony that when his son asked if they could bring their paintball guns along on the van ride, he "just stupidly said, 'Yeah.'" The People fail to explain how evidence that defendant allowed his sons to bring along paintball guns would have supported a jury finding that the boys were participants in his later beating of their mother during the van ride. Thus, we cannot conclude beyond a reasonable doubt that the jury would have found this aggravating circumstance true with regard to any of the four crimes.

2. *Inducement Of Minor*

Based on the same reasoning set forth above, we cannot conclude beyond a reasonable doubt that the jury would have found defendant induced a minor to commit or assist in any of the four crimes at issue here.

3. *Planning, Sophistication, And Professionalism*

With the nature of defendant's crimes in mind -- a threat to kill S. and three different beatings of her under various circumstances -- we cannot conclude beyond a reasonable doubt that the jury would have found the crimes at issue were carried out with planning, sophistication, and professionalism. It is just as likely, if not more so, that the jury would have found they were *not* planned, sophisticated, or professional.

4. *Position Of Trust Or Confidence*

The People suggest the jury would have found this aggravating circumstance true because defendant "testified that he was the father and sole economic provider in his household during the relevant time." But the fact that defendant was the children's father and the sole source of income says nothing about whether he *took advantage* of that position to commit the crimes at issue here. While the jury might have found that defendant somehow took advantage of his position in the household to commit one or more of the beatings of S. at issue here, we cannot conclude beyond a reasonable doubt that the jury would have made that finding.

5. Violent Conduct

It is beyond contradiction that in inflicting corporal injury on S., defendant engaged in violent conduct. However, "To the extent that violence does not exceed the force necessary to consummate the crime(s), it may not be used to aggravate the base term." (*People v. Key* (1984) 153 Cal.App.3d 888, 901, fn. 18.) Here, the jury's verdicts provide several reasons to doubt that the jury would have found that defendant's violent conduct exceeded the force necessary to consummate the crime of inflicting corporal injury on a spouse. First, with regard to the Super Bowl Sunday incident, the jury found that defendant did not personally inflict great bodily injury on S. in the commission of that offense. Second, with regard to the van ride to Roseville incident, although the jury found defendant inflicted corporal injury on S., the jury was unable to reach a verdict on the charge that he assaulted her by means of force likely to produce great bodily injury. Third, with regard to the laundry room incident, both of those circumstances are true: (1) the jury found that defendant did not personally inflict great bodily injury on S. in the commission of that offense; and (2) the jury found defendant inflicted corporal injury on S. but was unable to reach a verdict on the charge that he assaulted her by means of force likely to produce great bodily injury.

Given the foregoing, we cannot conclude beyond a reasonable doubt that the jury would have found defendant engaged in violent conduct that exceeded the force necessary to consummate the crimes, nor can we conclude beyond a reasonable doubt that

the jury would have found defendant's violent conduct was sufficient to indicate he posed a serious danger to society.

Because we are not persuaded beyond a reasonable doubt that the jury would have found at least one of the aggravating circumstances on which the trial court relied true had the jury been instructed to those circumstances, we cannot say the *Cunningham* error here was harmless. Accordingly, we must reverse the upper term sentences on counts VI, IX, XIII, and XVII and remand the case for resentencing pursuant to *People v. Sandoval*, *supra*, 41 Cal.4th at pages 843-858.

B

Cruel And Unusual Punishment

In advance of his sentencing, defendant filed a motion objecting to the imposition of the statutorily-required life sentence for torture (see § 206.1), arguing that a life sentence would violate the proscriptions against cruel or unusual punishment in the state and federal Constitutions. In arguing the motion, defense counsel asserted (among other things) that the court could consider "items in jurors' declarations" asserting that defendant "should not receive a life sentence for what they found him guilty."

In ruling on the motion, the court considered the three "techniques" identified in *In re Lynch* (1972) 8 Cal.3d 410 for determining whether a particular punishment is so disproportionate that it shocks the conscience: examining the nature of the offense and the offender; comparing the punishment with the penalty for more serious crimes in the same

jurisdiction; and comparing the punishment with the penalty for the same offense in other jurisdictions. (*Id.* at pp. 425-427.) In concluding the life sentence did not constitute cruel or unusual punishment, the court -- when comparing the punishment for torture with the punishment for other crimes in California -- observed (among other things) that with "a life sentence for torture, a person who receive[s] that sentence is eligible for parole in seven years."

As he did in the trial court, defendant contends on appeal his life sentence for torture constitutes cruel or unusual punishment. For the reasons set forth below, we disagree.

1. *California Constitution*

A punishment may violate the California Constitution if, although not "cruel or unusual" in its method, the punishment "is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity." (*In re Lynch*, *supra*, 8 Cal.3d at p. 424, fn. omitted.) As noted above, our Supreme Court in *In re Lynch* identified three "techniques" used by courts to determine whether a particular punishment is so disproportionate that it shocks the conscience. (*Id.* at pp. 425-427.) Defendant's argument addresses all three techniques.

Before we turn to defendant's arguments on the three techniques, however, we pause to consider two other claims of threshold error he makes regarding the trial court's ruling. First, defendant complains that "[i]n assessing the severity of the life sentence imposed, the trial court improperly focused on

the fact that a person sentenced to a simple life term is eligible for parole in seven years." Second, he complains that "[t]he court . . . erred in failing to give any consideration to the views expressed by jurors." In defendant's view, these errors by the trial court mean "the court did not engage in a constitutionally adequate analysis in rejecting [his] constitutional challenge" and therefore he "is entitled to a new sentencing hearing where his constitutional challenge can be assessed by a court applying the correct standard."

In support of his assertion of entitlement to a new sentencing hearing, defendant cites no authority, nor are we aware of any. Because the question of whether defendant's sentence amounted to cruel or unusual punishment is a question of law (see *People v. Williams* (1986) 180 Cal.App.3d 922, 926), we can "apply[] the correct standard" just as well as the trial court could. Thus, even if the trial court did err in the manner defendant asserts, remand is unnecessary, for we can determine ourselves, on de novo review, whether defendant's sentence was cruel or unusual.

With that in mind, we turn to defendant's arguments on the three techniques identified in *Lynch*. Turning to the first area of focus, "[i]n examining 'the nature of the offense and the offender,' we must consider not only the offense as defined by the Legislature but also 'the facts of the crime in question' (including its motive, its manner of commission, the extent of the defendant's involvement, and the consequences of his acts); we must also consider the defendant's individual culpability in

light of his age, prior criminality, personal characteristics, and state of mind." (*People v. Crooks* (1997) 55 Cal.App.4th 797, 806.)

On this point, defendant's argument is relatively brief. He emphasizes that he had no prior criminal record, was 43 years old at the time of his arrest, and -- as the trial court observed -- "brought himself up from nothing and made a success of [his] career as both [a] prosecutor and defense attorney." As for the crime, he asserts it "represents a minimum violation of the torture statute" and did "not present the same level of brutality normally found in torture cases."

Like the trial court, we do not dispute defendant's "good qualities," as reflected in his lack of a criminal record and success in life prior to the crimes in this case. But we also agree with the trial court that "the facts of this case demonstrate that [defendant is] also capable of gross inhumanity and [he is] neither remorseful or contrite for what happened." Under the circumstances of this case, notwithstanding defendant's lack of a criminal record before these crimes, we cannot conclude a life sentence is so disproportionate to defendant's crime that it shocks the conscience and offends fundamental notions of human dignity.

Turning to the second technique -- comparing the punishment with the penalty for more serious crimes in the same jurisdiction -- the court in *People v. Barrera* (1993) 14 Cal.App.4th 1555 noted that "[a] review of the statutes of California shows no crimes more serious than torture that are

punished less severely." (Id. at p. 1570.) Defendant contends that "[e]very crime in the Penal Code that is punishable by a determinate term receives lesser punishment than [his] offense," including "rape, robbery, burglary, arson, carjacking, and child molesting." What defendant fails to show, however, is that these crimes are "more serious than torture." It has been said that "'murder by torture was and is considered among the most reprehensible types of murder because of the calculated nature of the acts causing death.'" (Id. at p. 1569.) The crime of torture shares the same calculated nature, specifically, the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or any sadistic purpose. Given the particularly reprehensible nature of the crime, we cannot conclude that a life sentence for torture violates the proscription against cruel or unusual punishment under the interjurisdictional technique from *Lynch*.

Finally, we turn to the third technique -- comparing the punishment with the penalty for the same offense in other jurisdictions. For the most part, defendant's argument on this point seeks to compare the life sentence for torture in California with the potential sentence in other states for "[a]n act of violence that causes injury short of death." This is a flawed comparison because the crime of torture is more than simply a form of aggravated assault, and defendant does not show that the crimes in these other jurisdictions include the particularly reprehensible element of intending to cause cruel or extreme pain for purpose of revenge, extortion, persuasion,

or any sadistic purpose. Absent similar elements, the comparison defendant suggests is like comparing apples and oranges. The two sentences defendant does identify for torture in other jurisdictions -- a maximum term of 20 years under federal law and a maximum term of life under Michigan law for torture of a person held in custody -- do not support defendant's argument that the life term in California is so disproportionate it shocks the conscience and offends fundamental notions of human dignity.

For the foregoing reasons, we reject defendant's argument under the California Constitution.

2. *Federal Constitution*

Defendant contends an analysis similar to that provided for in *Lynch* is required under the Eighth Amendment pursuant to *Solem v. Helm* (1983) 463 U.S. 277 [77 L.Ed.2d 637]. Even if we accept that premise, it necessarily leads to the same conclusion we reached under California law -- a life term for torture is not cruel or unusual punishment.

C

Conduct Credits

Under section 4019, "When a prisoner is confined in a county jail . . . following arrest and prior to the imposition of sentence for a felony conviction," that person usually earns two days of worktime/conduct credits for every four days of actual confinement. (§ 4019, subds. (a)(4), (f).) However, "Notwithstanding Section 4019 or any other provision of law, the maximum credit that may be earned against a period of

confinement in, or commitment to, a county jail . . . following arrest and prior to placement in the custody of the Director of Corrections, shall not exceed 15 percent of the actual period of confinement for any person" "convicted of a felony offense listed in subdivision (c) of section 667.5." (§ 2933.1, subds. (a) & (c).) Torture is such an offense. (See §§ 206.1, 667.5, subd. (c)(7).)

At sentencing here, the trial court determined defendant was entitled to 945 days of custody credits for actual time served and 141 days in worktime/conduct credits calculated at 15 percent pursuant to section 2933.1, subdivision (c). Defense counsel argued that because the court had sentenced defendant to serve three consecutive 180-day jail terms for the misdemeanor child abuse convictions, the 15 percent limit on worktime credits under section 2933.1 should not apply to the jail time deemed served on the misdemeanors and he should instead receive credits at the usual one-third rate for that time. The trial court disagreed and directed that defendant's actual presentence custody time, along with the 15 percent worktime/conduct credits, should first be applied to the sentences imposed on the misdemeanors, then any remaining time should be applied to the life sentence for torture (after service of the minimum seven years).

On appeal, defendant contends it was error for the court to apply the 15 percent limit to the time deemed served on the misdemeanors. According to defendant, the 15 percent limit applies only to "presentence" custody credited against a later

prison sentence and time deemed served on a misdemeanor "is not presentence time credited against a prison sentence." In defendant's view, "When the court deducted time from [his] presentence time credit and treated it as time served on the misdemeanor counts, the time deducted was converted from 'presentence time' to 'term-serving time.' As such, it was no longer 'presentence time' subject to the limitation of Penal Code section 2933.1."

The validity of defendant's argument turns on the proper interpretation of subdivision (c) of section 2933.1. "[A]s with any statute," our role in interpreting that statute "is to ascertain the Legislature's intent so as to effectuate the purpose of the law. We accomplish this task if possible by giving the words of the statute their usual, ordinary meanings." (In re Reeves (2005) 35 Cal.4th 765, 770.)

As we have noted, under subdivision (c) of section 2933.1, for a person like defendant convicted of torture, "the maximum credit that may be earned against a period of confinement in, or commitment to, a county jail . . . following arrest and prior to placement in the custody of the Director of Corrections, shall not exceed 15 percent of the actual period of confinement." This limitation applies "[n]otwithstanding Section 4019 or any other provision of law." (§ 2933.1, subd. (c).)

There is nothing in the statute that restricts application of the 15 percent limit when some portion of the presentence jail time will ultimately be applied to satisfy jail terms on misdemeanor convictions sentenced contemporaneously with the

felony conviction that triggers the application of section 2933.1. The statute simply says that when a person is convicted of a qualifying felony, worktime/conduct credits for any time served in jail from arrest to sentencing shall not exceed 15 percent, period. Thus, the statute does not compel, or even support, the result defendant advocates.

To support his argument, defendant relies on *People v. Adrian* (1987) 191 Cal.App.3d 868, but that case is inapposite. It is true, as defendant notes, that in *Adrian* the court drew, in general terms, a distinction between "detention in jail or an equivalent facility prior to sentence . . . ('presentence time')" and "time in jail, prison, or equivalent facility while serving a sentence ('term serving time')." (*Id.* at p. 875.) But even accepting that subdivision (c) of section 2933.1 governs the calculation of custody credits for what *Adrian* called "presentence time," *Adrian* does not support defendant's assertion that what would otherwise be "presentence time" for purposes of the credit limit in subdivision (c) of section 2933.1 is retroactively converted into "term serving time" instead when the trial court sentences the defendant to a jail term for a misdemeanor along with a prison term for the felony that triggered the application of the statute. In the absence of any support for this novel conversion theory, defendant's argument that the trial court erred in calculating his custody credit fails.

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May 23, 2008

Deena C. Fawcett, Clerk/Administrator
California Court of Appeal
Third Appellate District
900 N Street
Sacramento, CA 95814

RE: *People v. Hamlin*
El Dorado County Superior Court No. P04CRF0132
Court of Appeal, Third Appellate District, Case No. C053982

Dear Ms. Fawcett:

Respondent requests permission to cite additional authority not included in its brief, which was executed on May 21, 2008. In *People v. Perez* (1992) 4 Cal.App.4th 893, 908-909, the Court of Appeal, Fourth Appellate District, found that the trial court had abused its discretion in failing to grant a hearing regarding juror misconduct. The appellate court remanded the matter back to the trial court to conduct a hearing. (*Id.* at p. 908.)

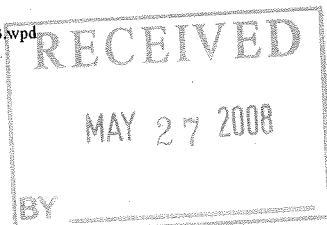
Sincerely,

MELISSA LIPON
Deputy Attorney General
State Bar No. 217719

For EDMUND G. BROWN JR.
Attorney General

MJL:rd

30467473.wpd



CMS

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: *People v. Hamlin*

No.: **C053982**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On May 23, 2008, I served the attached **REQUEST FOR PERMISSION TO CITE ADDITIONAL AUTHORITY (LETTER)** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Scott Concklin
Attorney at Law
2205 Hilltop Drive
PMB No. 116
Redding, CA 96002
(Attorney for Appellant - 2 copies)

Honorable Vernon Pierson
El Dorado County District Attorney
515 Main Street
Placerville, CA 95667

Central California Appellate Program
2407 J Street, Suite 301
Sacramento, CA 95826

Clerk of the Superior Court
El Dorado County
495 Main Street
Placerville, CA 95667

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 23, 2008, at Sacramento, California.

Declarant

 **COPY**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

C053982

v.

RICHARD HAMLIN,

Defendant and Appellant.

El Dorado County Superior Court No. P04CRF0132
The Honorable Eddie T. Keller, Judge

**REQUEST FOR LEAVE TO FILE OVERSIZED RESPONDENT'S BRIEF
[California Rules of Court 8.630(5)]**

EDMUND G. BROWN JR.
Attorney General of the State of California

DANE R. GILLETTE
Chief Assistant Attorney General

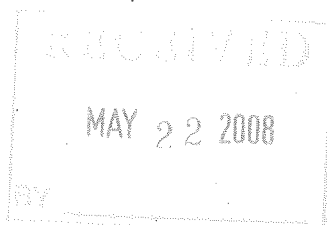
MICHAEL P. FARRELL
Senior Assistant Attorney General

STEPHEN G. HERNDON
Supervising Deputy Attorney General

MELISSA LIPON
Deputy Attorney General
State Bar No. 217719

1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 327-9671
Fax: (916) 324-2960

Attorneys for Respondent



CMS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

C053982

v.

RICHARD HAMLIN,

Defendant and Appellant.

TO THE HONORABLE ARTHUR G. SCOTLAND, PRESIDING
JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE
CALIFORNIA COURT OF APPEAL, THIRD APPELLATE DISTRICT

Pursuant to rule 8.630(5) of the California Rules of Court, respondent respectfully requests leave to file a respondent's brief exceeding 25,500 words. Respondent believes that the increased length of the brief is necessary to adequately set forth the fact of this case, and to present a full factual background of and legal analysis of each of the contentions raised by appellant. Therefore, the length of the respondent's brief is reasonably necessary to assist this Court in resolving appellant's claims.

Accordingly, respondent respectfully requests that this Court grant respondent leave to file a respondent's brief in excess of the 25,500 word limit set forth in rule 8.630(1) of the California Rules of Court, and the page limit set forth in rule 8.630(2) of the California Rules of Court.

Dated: May 20, 2008

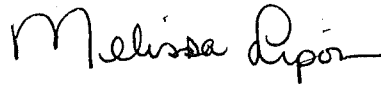
Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

DANE R. GILLETTE
Chief Assistant Attorney General

MICHAEL P. FARRELL
Senior Assistant Attorney General

STEPHEN G. HERNDON
Supervising Deputy Attorney General

A handwritten signature in cursive script, reading "Melissa Lipon".

MELISSA LIPON
Deputy Attorney General
Attorneys for Respondent

SA2007300792
30463142.wpd

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Hamlin**

No.: **C053982**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On May 21, 2008, I served the attached **REQUEST FOR LEAVE TO FILE OVERSIZED RESPONDENT'S BRIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, P.O. Box 944255, Sacramento, California 94244-2550, addressed as follows:

Scott Concklin
Attorney at Law
2205 Hilltop Drive
PMB No. 116
Redding, CA 96002
(Attorney for Appellant-2 copies)

Central California Appellate Program
2407 J Street, Suite 301
Sacramento, CA 95826

Honorable Vernon Pierson
El Dorado County District Attorney
515 Main Street
Placerville, CA 95667

Clerk of the Superior Court
El Dorado County
495 Main Street
Placerville, CA 95667

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 21, 2008, at Sacramento, California.

Declarant

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF EL DORADO**

495 Main Street
Placerville, California 95667
Voice: (530) 621-6426
Fax: (530) 622-9774

JUNE 22, 2007

DEENA C. FAWCETT, CLERK
COURT OF APPEAL
THIRD APPELLATE DISTRICT
900 N STREET, ROOM 400
SACRAMENTO, CA 95814

RE: THE PEOPLE OF THE STATE OF CALIFORNIA VS RICHARD WILLIAM HAMLIN
EL DORADO COUNTY NO. P04CRF0132
COURT OF APPEAL NO. C053982

DEAR MS. FAWCETT:

PURSUANT TO THE THIRD DISTRICT COURT OF APPEAL'S ORDER FILED JUNE 8, 2007
GRANTING APPELLANT'S MOTION TO AUGMENT THE RECORD ON APPEAL, ENCLOSED PLEASE
FIND THE FOLLOWING DOCUMENTS:

[X] REPORTER'S AUGMENTED TRANSCRIPT ON APPEAL (1) VOLS.

PLEASE FEEL FREE TO CONTACT ME AT (530) 621-6496 SHOULD YOU HAVE ANY QUESTIONS
REGARDING THIS MATTER.

VERY TRULY YOURS,

EL DORADO COUNTY SUPERIOR COURT

Lynn Cavin

BY: _____
LYNN CAVIN, APPEALS CLERK

LC:SS
ENCL.

CC: (WITH COPY OF REPORTER'S AUGMENTED TRANSCRIPT):
EDMUND G. BROWN JR., ATTORNEY GENERAL, STATE OF CALIFORNIA, 1300 I STREET,
SUITE 1101, SACRAMENTO, CA 94244-2550
SCOTT CONCKLIN, 2205 HILLTOP DRIVE, NO. PMB-116, REDDING, CA 96002

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THE PEOPLE OF THE
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---oo0oo---

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SUPPLEMENTAL POINTS AND AUTHORITIES FOR MOTION OF
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PEOPLE'S SUPPLEMENTAL RESPONSE TO DEFENSE MOTION
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1 CERTIFICATE OF DEPUTY CLERK OF EL DORADO COUNTY SUPERIOR COURT
2 STATE OF CALIFORNIA)
3 COUNTY OF EL DORADO)
4

5 I, Lynn Cavin, Deputy Clerk of the Superior Court of El
6 Dorado County, State of California, do hereby certify that I have
7 compared the foregoing photocopies of documents in File No.
8 P04CRF0132 & P05CRF0161, being those certain causes entitled:

9 THE PEOPLE OF THE STATE OF CALIFORNIA
10 VS
11 RICHARD WILLIAM HAMLIN

12 I certify that the same are full, true and correct photo-
13 graphic copies of the original papers of the said enumerated
14 copies on file and of record in this office; and that the fore-
15 going constitutes and is a full, true and correct photocopy of
16 all the said papers hereinbefore mentioned. I do further
17 certify that all personal juror identifying information either
18 did not appear in the original clerk's file or has been redacted
19 from the clerk's transcript(s) or documents, as per CCP 237.

20 IN WITNESS WHEREOF, I have hereunto set my hand and affixed
21 the seal of said Superior Court this 29th day of January,
22 2007.

23 EL DORADO COUNTY SUPERIOR COURT

24 **Lynn Cavin**
25 BY: Lynn Cavin, Appeals Clerk
26
27
28

CLERK'S CERTIFICATE OF DELIVERY OF TRANSCRIPT ON APPEAL

---oo0oo---

STATE OF CALIFORNIA)
COUNTY OF EL DORADO)

I, Lynn Cavin, Deputy Clerk of the Superior Court of El Dorado County, State of California, do hereby certify that, pursuant to Rule 32 of the California Rules of Court, on the 29th day of January, 2007, I delivered a copy of the certified Clerk's Transcript on Appeal to Appellant(s) by addressing the same to:

CENTRAL CALIFORNIA APPELLATE PROGRAM
2407 J Street, Suite 301
Sacramento, CA 95816

That, pursuant to Rule 32 of the California Rules of Court, on the 29th day of January, 2007, the original certified Clerk's Transcript on Appeal was delivered to the Third District Court of Appeal addressed to:

DEENA C. FAWCETT, Clerk
Court of Appeal
Third Appellate District
900 N Street, Room 400
Sacramento, CA 95814

That, on the 29th day of January, 2007, I delivered a copy of the certified Clerk's Transcript on Appeal addressed to:

JERRY BROWN, Attorney General
State of California
1300 I Street, Suite 1101
Sacramento, CA 94244-2550

WITNESS my hand and seal of the Superior Court of the State of California this 29th day of January, 2007.

EL DORADO COUNTY SUPERIOR COURT

BY: Lynn Cavin
Lynn Cavin, Appeals Clerk

EL DORADO COUNTY SUPERIOR COURT

FILED DEC 19 2006

BY *Juan Carlos*
Clerk

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

EL DORADO
COUNTY NOS. P04CRF0132
P05CRF0161

Defendant and Appellant. /

--oOo--

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From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--oOo--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalon, CSR No. 10618

CMS

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--o0o--

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

Defendant and Appellant. /

EL DORADO
COUNTY NOS. P04CRF0132
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--o0o--

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From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--o0o--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalón, CSR No. 10618

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

Defendant and Appellant. /

EL DORADO
COUNTY NOS. P04CRF0132
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--oOo--

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From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--oOo--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

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Reported by:

Katherine De Lacy, CSR No. 5432
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Sarah Stromberg, CSR No. 3154
Cindy Billalon, CSR No. 10618

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--o0o--

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

EL DORADO
COUNTY NOS. P04CRF0132
P05CRF0161

Defendant and Appellant. /

--o0o--

REPORTER'S TRANSCRIPT ON APPEAL
VOLUME IV OF XIX
PAGES 790 - 1014

From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--o0o--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalon, CSR No. 10618

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--o0o--

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

Defendant and Appellant. /

EL DORADO
COUNTY NOS. P04CRF0132
P05CRF0161

--o0o--

REPORTER'S TRANSCRIPT ON APPEAL
VOLUME V OF XIX
PAGES 1015 - 1231

From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--o0o--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalón, CSR No. 10618

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

EL DORADO
COUNTY NOS. P04CRF0132
P05CRF0161

Defendant and Appellant. /

--oOo--

REPORTER'S TRANSCRIPT ON APPEAL
VOLUME VI OF XIX
PAGES 1232 - 1403

From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--oOo--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalon, CSR No. 10618

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

EL DORADO
COUNTY NOS. P04CRF0132
P05CRF0161

Defendant and Appellant. /

--oOo--

REPORTER'S TRANSCRIPT ON APPEAL
VOLUME VII OF XIX
PAGES 1404 - 1663

From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--oOo--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalon, CSR No. 10618

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

EL DORADO
COUNTY NOS. P04CRF0132
P05CRF0161

Defendant and Appellant. /

--oOo--

REPORTER'S TRANSCRIPT ON APPEAL
VOLUME VIII OF XIX
PAGES 1664 - 1821

From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--oOo--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalon, CSR No. 10618

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

EL DORADO
COUNTY NOS. P04CRF0132
P05CRF0161

Defendant and Appellant. /

--oOo--

REPORTER'S TRANSCRIPT ON APPEAL
VOLUME IX OF XIX
PAGES 1822 - 1991

From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--oOo--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalón, CSR No. 10618

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

EL DORADO
COUNTY NOS. P04CRF0132
P05CRF0161

Defendant and Appellant. /

--oOo--

REPORTER'S TRANSCRIPT ON APPEAL
VOLUME X OF XIX
PAGES 1992 - 2215

From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--oOo--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalon, CSR No. 10618

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

EL DORADO
COUNTY NOS. P04CRF0132
P05CRF0161

Defendant and Appellant. /

--oOo--

REPORTER'S TRANSCRIPT ON APPEAL
VOLUME XI OF XIX
PAGES 2216 - 2414

From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--oOo--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalon, CSR No. 10618

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

EL DORADO
COUNTY NOS. P04CRF0132
P05CRF0161

Defendant and Appellant. /

--oOo--

REPORTER'S TRANSCRIPT ON APPEAL
VOLUME XII OF XIX
PAGES 2415 - 2656

From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--oOo--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalón, CSR No. 10618

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

EL DORADO
COUNTY NOS. P04CRF0132
P05CRF0161

Defendant and Appellant. /

--oOo--

REPORTER'S TRANSCRIPT ON APPEAL
VOLUME XIII OF XIX
PAGES 2657 - 2831

From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--oOo--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalon, CSR No. 10618

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

EL DORADO
COUNTY NOS. P04CRF0132
P05CRF0161

Defendant and Appellant. /

--oOo--

REPORTER'S TRANSCRIPT ON APPEAL
VOLUME XIV OF XIX
PAGES 2832 - 3169

From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--oOo--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalon, CSR No. 10618

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

EL DORADO
COUNTY NOS. P04CRF0132
P05CRF0161

Defendant and Appellant. /

--oOo--

REPORTER'S TRANSCRIPT ON APPEAL
VOLUME XV OF XIX
PAGES 3170 - 3378

From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--oOo--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalon, CSR No. 10618

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

EL DORADO
COUNTY NOS. P04CRF0132
P05CRF0161

Defendant and Appellant. /

--oOo--

REPORTER'S TRANSCRIPT ON APPEAL
VOLUME XVI OF XIX
PAGES 3379 - 3616

From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--oOo--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalon, CSR No. 10618

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

EL DORADO
COUNTY NOS. P04CRF0132
P05CRF0161

Defendant and Appellant. /

--oOo--

REPORTER'S TRANSCRIPT ON APPEAL
VOLUME XVII OF XIX
PAGES 3617 - 3804

From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--oOo--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalon, CSR No. 10618

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

EL DORADO
COUNTY NOS. P04CRF0132
P05CRF0161

Defendant and Appellant. /

--oOo--

REPORTER'S TRANSCRIPT ON APPEAL
VOLUME XVIII OF XIX
PAGES 3805 - 4090

From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--oOo--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalón, CSR No. 10618

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

COURT OF
APPEAL NO. C053982

vs.

RICHARD WILLIAM HAMLIN

EL DORADO
COUNTY NOS. P04CRF0132
P05CRF0161

Defendant and Appellant. /

--oOo--

REPORTER'S TRANSCRIPT ON APPEAL
VOLUME XIX OF XIX
PAGES 4091 - 4260

From a Judgment entered in the above-entitled cause
in the Superior Court of California, in and for the
County of El Dorado; having been tried before the:

Honorable EDDIE T. KELLER, Judge

--oOo--

COUNSEL

For the Appellant:

RICHARD WILLIAM HAMLIN
In Propria Persona

For the Respondents:

BILL LOCKYER
Attorney General
State of California
1300 I Street
Sacramento, California 94244-2550

ORIGINAL

Reported by:

Katherine De Lacy, CSR No. 5432
Bobbie Soroka CSR No. 11633
Sarah Stromberg, CSR No. 3154
Cindy Billalon, CSR No. 10618

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

DEPARTMENT NO. 2

HON. EDDIE T. KELLER, JUDGE

---o0o---

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

No. P04CRF0132

RICHARD WILLIAM HAMLIN,

P05C4F0161

Defendant./

---o0o---

REPORTER'S TRANSCRIPT ON PROCEEDINGS

JULY 2, 26, 30, AUGUST 5, 30, SEPTEMBER 27, OCTOBER 8, 2004,
JANUARY 3, 14, 31, FEBRUARY 10, 14, 18, 25, MARCH 14, APRIL
15, 29, MAY 13, JUNE 27, AUGUST 19, OCTOBER 11, 12, 13, 18,
19, 25, 26, 27, NOVEMBER 1, 2, 3, 8, 9, 10, 15, 16, 17, 29,
30, DECEMBER 1, 6, 7, 8, 13, 14, 15, 16, 19, 20, 21, 22, 29,
2005, JANUARY 3, 4, 5, 10, 13, FEBRUARY 3, APRIL 14, AUGUST
10, SEPTEMBER 1, 29, OCTOBER 30, NOVEMBER 3, 2006

---o0o---

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

DEPARTMENT NO. 2

HON. EDDIE T. KELLER, JUDGE

---o0o---

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

No. P04CRF0132

RICHARD HAMLIN,

P05CRF0161

Defendant./

---o0o---

REPORTER'S SEALED TRANSCRIPT ON PROCEEDINGS

PAGES 172 THROUGH 181

MONDAY, JANUARY 3, 2005

---o0o---

COPY
ORIGINAL

Reported by:

Katherine De Lacy, CSR #5432

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

DEPARTMENT NO. 2

HON. EDDIE T. KELLER, JUDGE

---oOo---

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

No. P04CRF0132

RICHARD HAMLIN,

P05CRF0161

Defendant.

---oOo---

REPORTER'S SEALED TRANSCRIPT ON PROCEEDINGS
PAGES 172 THROUGH 181
MONDAY, JANUARY 3, 2005

---oOo---

Reported by:

Katherine De Lacy, CSR #5432

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

DEPARTMENT NO. 2

HON. EDDIE T. KELLER, JUDGE

---o0o---

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

No. P04CRF0132

RICHARD HAMLIN,

Defendant./

---o0o---

REPORTER'S SEALED TRANSCRIPT ON PROCEEDINGS

PAGES 4094 THROUGH 4101

FRIDAY, SEPTEMBER 29, 2006

---o0o---

ORIGINAL
COPY

Reported by:

Katherine De Lacy, CSR #5432

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

DEPARTMENT NO. 2

HON. EDDIE T. KELLER, JUDGE

---o0o---

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

No. P04CRF0132

RICHARD HAMLIN,

Defendant./

---o0o---

REPORTER'S SEALED TRANSCRIPT ON PROCEEDINGS

PAGES 4094 THROUGH 4101

FRIDAY, SEPTEMBER 29, 2006

---o0o---

Reported by:

Katherine De Lacy, CSR #5432

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF EL DORADO
3

4 DEPARTMENT NO. 2

HON. EDDIE T. KELLER, JUDGE

5 ---oOo---

6 THE PEOPLE OF THE STATE OF CALIFORNIA,
7 Plaintiff,

8 vs.

Nos. P04CRF0132

9 RICHARD WILLIAM HAMLIN,

P05CRF0161

10 Defendant./

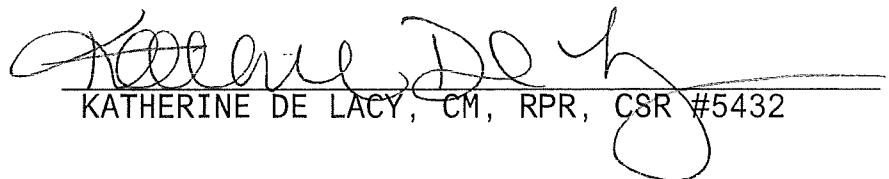
11 STATE OF CALIFORNIA }
12 COUNTY OF EL DORADO }

13 I, KATHERINE DE LACY, Certified Shorthand Reporter of
14 the State of California, do hereby certify the foregoing pages
15 1 - 81, 105 - 269, 279 - 493, 516 - 1231, 1559 - 3169, 3577 -
16 4072, 4091 - 4260, are a true and accurate transcription of my
17 said stenographic notes taken in the above-entitled matter on:

18 DATE OF PROCEEDINGS: 7/2,26,30, 8/5,30, 9/27/04,
19 1/3,14,31, 2/10,18,25, 3/14, 4/15,29, 5/13, 6/27, 8/19,
20 10/19,25,26,27, 11/1,2,3,10,15,16,17,29,30,
21 12/1,6,7,8,16,19,20,21,22,29/05, 1/3,4,5,10,13, 2/3, 9/1,29,
22 10/30, 11/3/06

23 Dated at Placerville, California, this 19th day of
24 December, 2006.

25 I further certify, pursuant to CCP 237(a)(2), all juror
26 information either did not appear or has been redacted from
27 the transcript.

28 
KATHERINE DE LACY, CM, RPR, CSR #5432

1 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF EL DORADO
3 DEPARTMENT NO. 2 HON. EDDIE T. KELLER, JUDGE

4 ---oOo---

5 THE PEOPLE OF THE STATE OF CALIFORNIA, COURT OF APPEAL
6 Plaintiff, NO.
7 vs. EL DORADO COUNTY
NO. PO4CRF0132

8 RICHARD WILLIAM HAMLIN,
9 Defendant.

10 _____/
11 STATE OF CALIFORNIA)
12 COUNTY OF EL DORADO)

13 I, CINDY BILLALON, Certified Shorthand Reporter of the
14 State of California, do hereby certify the foregoing pages
15 270 through 278 and 511 through 515 are a true and accurate
16 transcription of my said stenographic notes taken in the
17 above-entitled matter on:

18 DATE OF PROCEEDINGS: FEBRUARY 14, 2005

19 OCTOBER 18, 2005

20 I further declare, pursuant to CCP 237(a)(2), all
21 personal juror identifying information has either been
22 redacted or did not appear in the Reporter's Transcript in
23 the above-entitled case.

24 Dated at Placerville, California, this 7th day of
25 November, 2006.

26
27 Cindy Billalon
28 CINDY BILLALON, CSR 10618

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF EL DORADO
3 DEPARTMENT NO. 2 HON. EDDIE T. KELLER, JUDGE

4 ---oOo---

5 THE PEOPLE OF THE STATE OF CALIFORNIA,
6 Plaintiff,
7 VS.
8 RICHARD WILLIAM HAMLIN, Defendant./

No. P04CRF0132

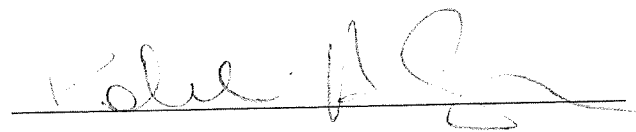
9 STATE OF CALIFORNIA }
10 COUNTY OF EL DORADO }

11 I, BOBBIE A. SOROKA, Certified Shorthand Reporter of
12 the State of California, do hereby certify the foregoing
13 pages 82 through 104 are a true and accurate transcription of
14 my said stenographic notes taken in the above-entitled matter
15 on:

16
17 DATE OF PROCEEDINGS: October 8, 2004.

18 Dated at Cameron Park, California, this 20th day of
19 November, 2006.

20
21 I further certify, pursuant to CCP 237(a)(2), all juror
22 information either did not appear or has been redacted from
23 the transcript.

24
25
26 
27 BOBBIE A. SOROKA RPR, CSR #11633
28

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

DEPARTMENT NO. 2

HON. EDDIE T. KELLER, JUDGE

---o0o---

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

No. P05CRF0161

RICHARD W. HAMLIN,

Defendant.

STATE OF CALIFORNIA)

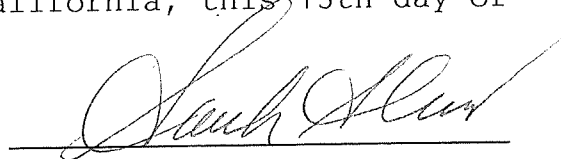
COUNTY OF EL DORADO) ss.

I, SARAH STROMBERG, Certified Shorthand Reporter for the State of California, do hereby certify the foregoing pages 494 through 510, 1232 through 1558, 3170 through 3528, and 4073 through 4090 are a true and accurate transcript of my stenographic notes in the above-entitled matter.

DATE OF PROCEEDINGS: October 11, 2005, October 12, 2005, October 13, 2005, November 8, 2005, November 9, 2005, December 13, 2005, December 14, 2005, December 15, 2005, April 14, 2006 and August 10, 2006

I further declare, pursuant to CCP 237(a)(2), all personal juror identifying information has either been redacted or did not appear in the Reporter's Transcript in the above-entitled case.

Dated at Placerville, California, this 13th day of Decembe 2006.



SARAH STROMBERG CSR #3154

CLERK'S CERTIFICATE OF DELIVERY OF TRANSCRIPT ON APPEAL
TO DISTRICT COURT OF APPEAL

--oOo--

STATE OF CALIFORNIA }
COUNTY OF EL DORADO } ss.

I, Lynn Cavin, Superior Court Clerk of El Dorado
County, State of California, and Ex-Officio Clerk of the
Superior Court, do hereby certify that on the 29th day of
January, 2007, I delivered the original
Transcript on Appeal to the District Court of Appeal, Third
Appellate District, by registered mail, addressed to:

DEENA C. FAWCETT
Clerk of the District Court of Appeal
Third Appellate District
900 N Street
Sacramento, California 95814

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of the Superior Court this 29th day of
January, 2007.

Lynn Cavin,
Superior Court Clerk

BY Lynn Cavin
Deputy

OFFICE OF THE CLERK

DEENA C. FAWCETT
CLERK/ADMINISTRATOR

NORMAN H. HAREBOTTLE
ASSISTANT CLERK/ADMINISTRATOR

Court of Appeal
THIRD APPELLATE DISTRICT
STATE OF CALIFORNIA

DEPUTIES:

DARLENE A. WARNOCK
D. BRUCE KORDENBROCK
ANITA L. KENNER
SANDY GREEN
GAYLE KELLY
ANNE K. MELINE
KAREN L. RODRIGUEZ
GRACE E. EMERO
THERESA DEVINE
REBEKAH S. THORNTON
ANA I. CAVAZOS
KATHI RUTHERDALE
SUSAN E. WELSH

December 15, 2006

Lynn Cavn
Appeals Clerk
El Dorado County Superior Court
495 Main Street
Placerville, CA 95667

Re: The People v. Hamlin
C053982
El Dorado County
No. P04CRF0132

Dear Trial Court Clerk:

California Rules of Court, rule 32(e)(2), limits the time this court may extend for preparation of the record to 60 days beyond the original 20 days permitted for filing of the record. The court has, therefore, granted your request for extension of time to January 22, 2007, with the notation that "NO FURTHER TIME WILL BE GRANTED."

Your attention is directed to the California Rules of Court, rule 46.5, which states, **"the failure of a clerk...to perform any duty imposed by statute or these rules that delays the filing of the appellate record is an unlawful interference with the reviewing court's proceedings. It may be treated as an interference in addition to or instead of any other sanction that may be imposed by law for the same breach of duty."** (See also Gov. Code, sec. 69944.)

Unless the record is received by the trial court by February 1, 2007, an order to show cause for contempt, requiring your personal appearance, may issue.

Very truly yours,

DEENA C. FAWCETT
Clerk/Administrator

By:


Deputy Clerk

cc: See Mailing List

CMS

Court of Appeal
THIRD APPELLATE DISTRICT
STATE OF CALIFORNIA

MAILING LIST

Re: The People v. Hamlin
C053982
El Dorado County
No. P04CRF0132

DEPUTIES:
DARLENE A. WARNOCK
D. BRUCE KORDENBROCK
ANITA L. KENNER
SANDY GREEN
GAYLE KELLY
ANNE K. MELINE
KAREN L. RODRIGUEZ
GRACE E. EMERO
THERESA DEVINE
REBEKAH S. THORNTON
ANA I. CAVAZOS
KATHI RUTHERDALE
SUSAN E. WELSH

Copies of the attached document have been sent to the individuals checked below:

Presiding Judge of the Superior Court
El Dorado County Superior Court
495 Main Street
Placerville, CA 95667

Appeals Unit
El Dorado County Superior Court
495 Main Street
Placerville, CA 95667

DEC 13 2006

**REQUEST FOR EXTENSION OF TIME
Trial Court Clerks or Court Reporters**

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT, Clerk

BY _____ Deputy

CASE TITLE: THE PEOPLE OF THE STATE OF CALIFORNIA VS RICHARD WILLIAM HAMLIN

Appellate **CASE NO: C053982 COUNTY EL DORADO NO: P04CRF0132 & P05CRF0161**

REMINDER

**Did you sign
This
request?**

**Did your
Supervisor
sign this
request?
(See rule
35(d),
C.R.C.)**

**Did you
Provide a
Stamped,
self-
Addressed
return
envelope
for this
request?**

I request an extension to JANUARY 22, 2007 (date) in which to file the CLERK'S or REPORTER'S transcripts. The deadline for filing this document is: DECEMBER 18, 2006 PER EXTENSION FILED NOVEMBER 13, 2006 (ORIGINAL DUE DATE WAS NOVEMBER 22, 2006) (date)

☒ Notice of appeal filed on NOVEMBER 2, 2006 (date)

☐ Order augmenting record filed on _____ (date)

☐ Notice of intent to file writ petition filed on _____ (date)

☐ Payment of (arrangements for) estimated costs were made on _____ (date)

____ I have completed preparation of _____ hours of transcript out of a total of _____ hours of reporter's transcripts.

☒ I have completed preparation of 0 pages of transcript out of a total of 2000 - 3000 pages of Clerk's record.

☒ Number of previous extensions: 1 (number).

The transcript cannot be completed within the time provided by the California Rules of Court for the following reasons: (Use the back of this sheet or another sheet if necessary.)

1. MY HUSBAND IS SCHEDULED TO HAVE BACK SURGERY ON DECEMBER 20, 2006.
2. OTHER APPEALS.
3. I AM THE ONLY APPEALS CLERK FOR ALL APPEALS FILED IN EL DORADO COUNTY SUPERIOR COURTS, INCLUDING SUPERIOR COURT APPELLATE DEPARTMENT APPEALS

DECLARATION: I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief, and that I expect to file said transcript within the time requested.

LYNN CAVIN, APPEALS CLERK

DECEMBER 7, 2006

(Applicant's Name. Please print or type)

(Date)

(Applicant's Signature)

Applicant's Telephone No. **(530) 621-6496**

APPROVED BY

TITLE: ASSISTANT PRESIDING JUDGE

COURT USE ONLY BELOW THIS LINE

(Received Stamp)

IT IS SO ORDERED:

Scotland, P.J.

(PRESIDING OR ACTING PRESIDING JUSTICE)

CMS

**NO FURTHER TIME
WILL BE GRANTED**



THE STATE BAR
OF CALIFORNIA

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

OFFICE OF THE CHIEF TRIAL COUNSEL
ENFORCEMENT

TELEPHONE: (415) 538-2000
TDD: (415) 538-2231
FAX: (415) 538-2220

DIRECT DIAL: (415) 538-2156

November 29, 2006

Criminal Court Clerk
El Dorado County Superior Court
495 Main Street
Placerville, CA 95667

Re: **Richard W. Hamlin, Case No. P04CRF0132**

Dear Court Clerk:

This office is responsible for monitoring the criminal charges/convictions of California attorneys pursuant to Business and Professions Code §§ 6101, et seq. Please note that Business and Professions Code section 6101(c) provides, in part:

The clerk of the court in which an attorney is convicted of a crime, shall within 48 hours after the conviction, transmit a certified copy of the record of conviction to the office of the State Bar ...

Enclosed is a **Notice of Appeal/Lack of Appeal** form. Please complete the form and return the original in the postage pre-paid envelope.

If you have any questions, please do not hesitate to contact me at the number listed above. Thank you in advance for your cooperation and assistance.

Very truly yours,

Laura Williams
Paralegal / Conviction Monitoring

Enclosures

CMS

11-30-06 mailed - L

**NOTICE OF APPEAL/LACK OF APPEAL
FORM**

Please check, sign, date and return the **ORIGINAL** of this form in the enclosed self-addressed postage prepaid envelope.

**IN REGARD TO THE CRIMINAL CONVICTION OF RICHARD W. HAMLIN
EL DORADO COUNTY SUPERIOR COURT, CASE NUMBER P04CRF0132**

Please check **one** of the following:

☐ The time period for filing a Notice of Appeal has expired and a Notice of Appeal was **not** filed in the above-referenced matter.

☒ A Notice of Appeal has been filed in the above-referenced matter and attached is a certified copy of the Notice of Appeal.

COURT LOCATION: EL DORADO COUNTY SUPERIOR COURT
PLACERVILLE, CA

Dated: 11/30/06

By: Lynn Cavin

Court Clerk or Designee

Lynn Cavin

CERTIFIED COPY

RICHARD HAMLIN
300 Forni Road
Placerville, CA 95667
(530) 621-6000

EL DORADO CO. SUPERIOR CT.

NOV 02 2006
Lynn Caver
Deputy

In Propria Persona

SUPERIOR COURT OF CALIFORNIA

COUNTY OF EL DORADO

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

CASE NO.: P04CRF0132
P05CRF0161
AMENDED NOTICE OF
APPEAL

vs.

RICHARD HAMLIN,

Defendant.

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant above-named, RICHARD HAMLIN, hereby appeals from the judgment and sentence of the above-entitled Court, entered September 29, 2006, following his Jury Trial, in the above-named action, to the Court Of Appeal, Third Appellate District.

Executed on November 2, 2006, at Placerville, California.

I, the undersigned, being a true certified copy of the original, do hereby certify that it bears the seal, imprinted with the seal of the Court, the date of issuance and the signature of the official.

Richard Hamlin
RICHARD HAMLIN
Defendant/Appellant

NOV 30 2006

NOV 30 2006
Lynn Caver

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BY *John C. ...*
Clerk

Symon Cavin
105 Congress St
Boston, Ma

Court of Appeal
State of California
Third Appellate District

FILED

NOV 21 2006

REQUEST FOR EXTENSION OF TIME
Trial Court Clerks or Court Reporters

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT, Clerk
BY _____ Deputy

CASE TITLE: People vs. Richard Hamlin

Appellate CASE NO: 053982 COUNTY EL DORADO NO: P04CRF0132/P05CRF0161

REMINDER

Did you sign
This request?

Did your
Supervisor
sign this
request? (See
rule 35(d),
C.R.C.)

Did you
provide a
stamped, self-
addressed
return envelope
for this request?

I request an extension to 12/22/06 (date) in which to file the CLERK'S or
REPORTER'S transcripts. The deadline for filing this document is: 11/22/06
(date)

[X] Notice of appeal filed on 11/2/06 [] Order augmenting record filed on _____
(date) (date)

☐ Notice of intent to file writ petition filed on _____ (date)

☐ Payment of (arrangements for) estimated costs were made on _____
(date)

X I have completed preparation of 40 hours of transcript out of a total of 270 hours of
reporter's transcripts.

 I have completed preparation of pages of transcript out of a total of pages of
Clerk's record.

X Number of previous extensions 0 (number).

The transcript cannot be completed within the time provided by the California Rules of Court
for the following reasons: (Use the back of this sheet or another sheet if necessary.)

1. Other transcripts
2. Courtroom duties
3. Lengthy transcript

DECLARATION: I declare under penalty of perjury that the foregoing statements are true and
correct to the best of my knowledge and belief, and that I expect to file said transcript within the time
requested.

Katherine De Lacy

(Applicant's Name. Please print or type) November 20, 2006 (Date)

(Applicant's Signature)

Applicant's Telephone No. (330) 621-6435

APPROVED BY: Eddie Keller

TITLE: Assistant Presiding Judge

COURT USE ONLY BELOW THIS LINE

(Received Stamp)

IT IS SO ORDERED:

Scotland, P.J.

(PRESIDING OR ACTING PRESIDING JUSTICE)

(ct/rt-extension.06/30/99)

CMS

EL DORADO COUNTY PROBATION DEPARTMENT

MAIN OFFICE

471 Pierroz Road
Placerville, CA 95667
Tele. (530) 621-5625
FAX (530) 621-2430

JUVENILE HALL

299 Fair Lane
Placerville, CA 95667
Tele. (530) 621-5585
FAX (530) 295-2519

SOUTH LAKE TAHOE OFFICE

1360 Johnson Blvd., Ste 102
South Lake Tahoe, CA 96150
Tele. (530) 573-3083
FAX (530) 541-1880

JUVENILE TREATMENT CENTER

1041 Al Tahoe Blvd.
South Lake Tahoe, CA 96150
Tele. (530) 573-7980
FAX (530) 543-6978



Joseph S. Warchol II
Chief Probation Officer

November 16, 2006

DEPUTY

The Honorable Eddie T. Keller
Judge of the Superior Court, Dept. 2
495 Main Street
Placerville, CA 95667

HEARING DATE: N/A
TIME: N/A

Re: **Richard W. Hamlin**
No: P04CRF0132

Amended Letter.

Dear Judge Keller:

In the previous time credit letter filed November 14, 2006, the Probation Officer mistakenly gave the sentencing date as October, 20, 2006. The correct date of sentencing was October 29, 2006. This letter amends the time credits to reflect the October 29, 2006, sentencing date.

On October 29, 2006, the defendant was sentenced to Life on Count I: 206 P.C., Torture, a felony, and consecutive one-hundred eighty (180) day sentences on Counts II, III, and IV: Cruelty to a child by causing unjustifiable mental suffering. All other sentences for the remaining counts were stayed pursuant to §654 P.C.

Pursuant to §2933.1 P.C., the defendant is entitled to fifteen (15) percent conduct credit on his pre-sentence custody credit. It is therefore respectfully recommended the defendant receive the following credits.

<u>Facility</u>	<u>From</u>	<u>To</u>	<u>Days Served</u>
El Dorado County Jail	2/28/2004	10/29/2006	975
TOTAL ACTUAL DAYS:			975

In light of the above, it is respectfully recommended the defendant be credited for 975 actual days, plus 146 days conduct credit, for a total of 1121 days served pending these proceedings.

Conduct credits were calculated at ☐ 33%, pursuant to §4019 P.C. ☒ 15%, pursuant to §2933.1 P.C.


Re: **Richard W. Hamlin**
No: P04CRF0132

Amended Letter.

Pursuant to §669 P.C., the defendant must serve the determinate sentences prior to the indeterminate sentence. The Court found the fifteen (15) percent conduct credit applies to the consecutive one-hundred eighty (180) day sentences on the misdemeanor counts. With that being so, the defendant will serve one-hundred fifty-seven (157) actual days and accrue twenty-three (23) days conduct credit on each one-hundred eighty (180) day sentence. Therefore, the defendant must serve four-hundred seventy-one (471) actual days before beginning his term on the life sentence.

Respectfully submitted,

JOSEPH S. WARCHOL II
CHIEF PROBATION OFFICER

By: 
Ben Kinser
Deputy Probation Officer

BK

Approved:



Karina Pitts
Supervising Deputy Probation Officer

cc: District Attorney
Public Defender

ABSTRACT OF JUDGMENT – PRISON COMMITMENT - INDETERMINATE

[NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-292 ATTACHED]

CR-292

SUPERIOR COURT OF CALIFORNIA, COUNTY OF: EL DORADO		EL DORADO CO. SUPERIOR COURT NOV 15 2006	
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: RICHARD WILLIAM HAMLIN AKA: CII#: M08090085 BOOKING #: 401303		DOB: 04-15-60 <input type="checkbox"/> NOT PRESENT	P04CRF0132 FILED BY <i>[Signature]</i> -C Deputy
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT		<input checked="" type="checkbox"/> AMENDED ABSTRACT	-D
DATE OF HEARING 11-03-06	DEPT. NO. 2	JUDGE EDDIE T. KELLER	
CLERK S. DAHLGREN	REPORTER K. DeLACY #5432	PROBATION NO. OR PROBATION OFFICER BEN KINSER	
COUNSEL FOR PEOPLE VICKI ASHWORTH		COUNSEL FOR DEFENDANT PRO PER AND ROBERT BANNING <input checked="" type="checkbox"/> APPTD.	

1. Defendant was convicted of the commission of the following felonies:

- ☒ Additional counts are listed on attachment
1 (number of pages attached)

CNT.	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY			CONCURRENT	CONSECUTIVE	664 STAY
						JURY	COURT	PLEA			
1	PC	206	TORTURE	2004	01-10-06	X					
					- -						
					- -						
					- -						
					- -						
					- -						

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

Defendant was sentenced to State Prison for an INDETERMINATE TERM as follows:

4. ☐ LIFE WITHOUT THE POSSIBILITY OF PAROLE on counts
5. ☒ LIFE WITH THE POSSIBILITY OF PAROLE on counts 1
6. a. ☐ 15 years to Life on counts _____ c. ☐ _____ years to Life on counts _____
- b. ☐ 25 years to Life on counts _____ d. ☐ _____ years to Life on counts _____
- PLUS enhancement time shown above.
7. ☒ Additional determinate term (see CR-290).
8. Defendant was sentenced pursuant to ☐ PC 667(b)-(i) or PC 1170.12 ☐ PC 667.61 ☐ PC 667.7 ☐ other (specify):

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for indeterminate sentences. Attachments may be used but must be referred to in this document.

Page 1 of 2

PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: RICHARD WILLIAM HAMLIN			
P04CRF0132	-A	-B	-C
			-D

9. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

a. Restitution Fine(s):

Case A: \$1000.	per PC 1202.4(b) forthwith per PC 2085.5;	\$1000.	per PC 1202.45 suspended unless parole is revoked.
Case B: \$	per PC 1202.4(b) forthwith per PC 2085.5;	\$	per PC 1202.45 suspended unless parole is revoked.
Case C: \$	per PC 1202.4(b) forthwith per PC 2085.5;	\$	per PC 1202.45 suspended unless parole is revoked.
Case D: \$	per PC 1202.4(b) forthwith per PC 2085.5;	\$	per PC 1202.45 suspended unless parole is revoked.

b. Restitution per PC 1202.4(f):

Case A: \$17,533.84	<input type="checkbox"/> Amount to be determined to <input checked="" type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund
Case B: \$	<input type="checkbox"/> Amount to be determined to <input type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund
Case C: \$	<input type="checkbox"/> Amount to be determined to <input type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund
Case D: \$	<input type="checkbox"/> Amount to be determined to <input type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund

(*List victim name(s) if known and amount breakdown in item 11, below.)

c. Fine(s):

Case A: \$	per PC 1202.5. \$	per VC 23550 or	days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS
Case B: \$	per PC 1202.5. \$	per VC 23550 or	days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS
Case C: \$	per PC 1202.5. \$	per VC 23550 or	days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS
Case D: \$	per PC 1202.5. \$	per VC 23550 or	days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS

d. Lab Fee and Drug Program Fee:

Case A: Lab Fee: \$	per HS 11372.5(a) for counts _____	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).
Case B: Lab Fee: \$	per HS 11372.5(a) for counts _____	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).
Case C: Lab Fee: \$	per HS 11372.5(a) for counts _____	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).
Case D: Lab Fee: \$	per HS 11372.5(a) for counts _____	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).

10. TESTING

a. ☐ AIDS pursuant to PC 1202.1 b. ☒ DNA pursuant to PC 296 c. ☐ other (specify):

11. Other orders (specify):

Amended restitution amounts:

As to #9b: Victim restitution in the following amounts to these named victims: \$6428.84 to Susan Hamlin, \$2880.00 to Ryan Hamlin, \$4550.00 to Alec Hamlin, \$2260.00 to Clare Hamlin and \$1495.00 to Jennifer Hamlin, plus ongoing restitution for all victims as named above.

Restitution is an ongoing issue and may be amended in the future.

As to misdemeanor counts 2, 3 and 4, all violations of California Penal Code Section 273A(B); Defendant sentenced to 180 days jail for each count, to run consecutive to each other and to the sentence imposed for Count One (1). The Defendant shall receive actual credit plus 15% good time / work time credits for all charges. The credit shall be applied to Counts 2, 3 and 4 first and any remaining good time / work time credits shall not be applied until the Defendant has reached the Minimum Eligibility Parole Date (MEPD).

12. EXECUTION OF SENTENCE IMPOSED

- a. ☐ at initial sentencing hearing.
b. ☐ at resentencing per decision on appeal.
c. ☐ after revocation of probation.
d. ☐ at resentencing per recall of commitment. (PC 1170(d).)
e. ☒ other (specify):
Amended after restitution hearing.


13. CREDIT FOR TIME SERVED

CASE	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT
A	1126	980	<input type="checkbox"/> 4019 <input checked="" type="checkbox"/> 2933.1
B			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
C			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
D			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
Date Sentence Pronounced:		Time Served in State Institution:	
11-03-06		DMH	CDC CRC
		[]	[] []

14. The defendant is remanded to the custody of the sheriff ☒ forthwith ☐ after 48 hours excluding Saturdays, Sundays, and holidays.
To be delivered to ☒ the reception center designated by the director of the California Department of Corrections.
☐ other (specify):

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE 	DATE 11-14-06
--	-------------------------

CR-290-A

P04CRF0132 -A

-B

-C

-D

- [illegible]

- [illegible]

- [illegible]

4. TOTAL TIME IMPOSED ON THIS ATTACHMENT PAGE: 15 years, 0 months, stayed per 654R 0 0

STATE PRISON COMMITMENT INFORMATION

Case No. P24CRF0132

Name: Richard William Hamlin

DOCUMENTS

INCLUDED IN PACKET

MAILED

Abstract of Judgment

✓

Judgment & Sentencing M.O.

✓

Restitution NO

✓

Probation Officer's Report

✓

INDICTMENT
Information/Certificate of
Commitment

✓

LETTER TO DEPT OF
CORRECTIONS FROM
JUDGE KELLER

Motion for Mitigation

Motion for Aggravation

Psychiatric Reports

Fingerprint Form

Commitment packet picked up by Sheriff's office on:

Certified copy of M.O. sent to Transportation on:

Conrad
0119

11/15/06

EL DORADO COUNTY PROBATION DEPARTMENT

MAIN OFFICE

471 Pierroz Road
Placerville, CA 95667
Tele. (530) 621-5625
FAX (530) 621-2430

JUVENILE HALL

299 Fair Lane
Placerville, CA 95667
Tele. (530) 621-5585
FAX (530) 295-2519

SOUTH LAKE TAHOE OFFICE

1360 Johnson Blvd., Ste 102
South Lake Tahoe, CA 96150
Tele. (530) 573-3083
FAX (530) 541-1880

JUVENILE TREATMENT CENTER

1041 Al Tahoe Blvd.
South Lake Tahoe, CA 96150
Tele. (530) 573-7980
FAX (530) 543-6978



Joseph S. Warchol II
Chief Probation Officer

November 14, 2006

The Honorable Eddie T. Keller
Judge of the Superior Court, Dept. 2
495 Main Street
Placerville, CA 95667

HEARING DATE: N/A
TIME: N/A

Re: **Richard W. Hamlin**
No: P04CRF0132

Dear Judge Keller:

This letter is to inform the Court of the defendant's pre-sentence time credits up to the date of sentencing on October 20, 2006.

On October 20, 2006, the defendant was sentenced to Life on Count I: 206 P.C., Torture, a felony, and consecutive one-hundred eighty (180) day sentences on Counts II, III, and IV: Cruelty to a child by causing unjustifiable mental suffering. All other sentences for the remaining counts were stayed pursuant to §654 P.C.

Pursuant to §2933.1 P.C., the defendant is entitled to fifteen (15) percent conduct credit on his pre-sentence custody credit. It is therefore respectfully recommended the defendant receive the following credits.

<u>Facility</u>	<u>From</u>	<u>To</u>	<u>Days Served</u>
El Dorado County Jail	2/28/2004	10/20/2006	966
<u>TOTAL ACTUAL DAYS:</u>			966

In light of the above, it is respectfully recommended the defendant be credited for 966 actual days, plus 144 days conduct credit, for a total of 1110 days served pending these proceedings.

Conduct credits were calculated at ☐ 33%, pursuant to §4019 P.C. ☒ 15%, pursuant to §2933.1 P.C.

Re: **Richard W. Hamlin**

No: P04CRF0132

Pursuant to §669 P.C., the defendant must serve the determinate sentences prior to the indeterminate sentence. The Court found the fifteen (15) percent conduct credit applies to the consecutive one-hundred eighty (180) day sentences on the misdemeanor counts. With that being so, the defendant will serve one-hundred fifty-seven (157) actual days and accrue twenty-three (23) days conduct credit on each one-hundred eighty (180) day sentence. Therefore, the defendant must serve four-hundred seventy-one (471) actual days before beginning his term on the life sentence.

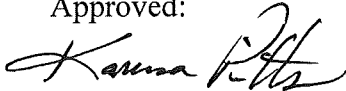
Respectfully submitted,

JOSEPH S. WARCHOL II
CHIEF PROBATION OFFICER



By: Ben Kinser
Deputy Probation Officer

Approved:



Karina Pitts
Supervising Probation Officer

cc: District Attorney
Public Defender

COPY FILED

REQUEST FOR EXTENSION OF TIME
Trial Court Clerks or Court Reporters

NOV 13 2006

CASE TITLE: THE PEOPLE OF THE STATE OF CALIFORNIA VS RICHARD WILLIAM HAMLIN DISTRICT
DEENA C. FAWCETT

Appellate CASE NO: C053982 COUNTY EL DORADO NO: P04CRF0132 & P05CRF0161 Deputy

REMINDER

I request an extension to DECEMBER 18, 2006 (date) in which to file the CLERK'S or
REPORTER'S transcripts. The **deadline for filing** this document is: NOVEMBER 22, 2006
(date)

Did you sign
This
request?

☒ Notice of appeal filed on NOVEMBER 2, 2006
(date)

☐ Order augmenting record filed on _____
(date)

☐ Notice of intent to file writ petition filed on _____
(date)

Did your
Supervisor
sign this
request?
(See rule
35(d),
C.R.C.)

☐ Payment of (arrangements for) estimated costs were made on _____
(date)

____ I have completed preparation of _____ hours of transcript out of a total of _____ hours of
reporter's transcripts.

☒ I have completed preparation of 0 pages of transcript out of a total of 1500 - 2000 pages of
Clerk's record.

☒ Number of previous extensions: 0 (number).

Did you
Provide a
Stamped,
self-
Addressed
return
envelope
for this
request?

The transcript cannot be completed within the time provided by the California Rules of Court for the
following reasons: (Use the back of this sheet or another sheet if necessary.)

1. I WAS OUT OF THE OFFICE 6 DAYS DUE TO ILLNESS IN OCTOBER, 2006.
2. THE CLERK'S OFFICE AT THE SUPERIOR COURT LOST APPROXIMATELY 2 DAYS WORK TIME DUE TO
MOVING AND INSTALLATION OF NEW CARPET
3. I AM THE ONLY APPEALS CLERK FOR ALL APPEALS FILED IN EL DORADO COUNTY SUPERIOR
COURTS, INCLUDING SUPERIOR COURT APPELLATE DEPARTMENT APPEALS

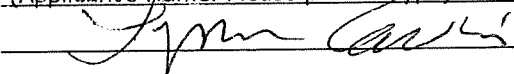
DECLARATION: I declare under penalty of perjury that the foregoing statements are true and
correct to the best of my knowledge and belief, and that I expect to file said transcript within the time
requested.

LYNN CAVIN, APPEALS CLERK

NOVEMBER 9, 2006

(Applicant's Name. Please print or type)

(Date)



(Applicant's Signature)

Applicant's Telephone No. (530) 621-6496

APPROVED BY:

EDDIE T. KELLER

TITLE: ASSISTANT PRESIDING JUDGE

COURT USE ONLY BELOW THIS LINE

(Received Stamp)

IT IS SO ORDERED:

Scotland, P.J.

(PRESIDING OR ACTING PRESIDING JUSTICE)

CMS

Superior Court of the State of California
In and For
The County of El Dorado

495 Main Street
Placerville, CA 95667
(916) 621-6426
FAX (916) 622-9774

EL DORADO CO. SUPERIOR CT.

FILED NOV 07 2006

BY

Deputy

ORDER

RECEIPT FOR RELEASE OF EVIDENCE

Copies of Exhibits

PEOPLE OF THE STATE
OF CALIFORNIA

CASE NO. PO4CRF0132

vs.

HAMILIN, RICHARD

I hereby acknowledge receipt of evidence in the above-referenced case as follows:

Copies of Exhibits

Exhibit No. See Attached

Item: Highlighted Items

Exhibit No. _____

Item: #15, 8, 13, 14, 15, 27,

Exhibit No. _____

Item: 28, 29, 30, 31, 36, 37, (28B)

Exhibit No. _____

Item: (29B) 141, (219) 229, 259,

Exhibit No. _____

Item: 260, 261, 297, 223

Released By: _____

Date: _____

28B, 29B + 219 - not copied -
not admitted as evidence, not
in courts possession

Name

Received By: _____

Date: 11-02-06

JEFF ANSPACH (per Vicki Ashworth)

Name

Dated: 11/2/06 **CMS** Eddie Keller

EDDIE T. KELLER Assistant
Presiding Judge

People

vs./and

Richard Hamlin

Page

1

Case No.

POHCRFO132

Date:

10-25-05

List of Exhibits

Exh. No.	Offered By	Description	2005	ADMIT	REDACT
PEO	DEF	ID			
1	✓	Deviator Small Silver Handgun	10/25	11-17 2005	
2	✓	Paintball Gun / Green & Silver	10/25		
3	✓	Taser	10/25		
4	✓	Diagram by Ivan Hamlin	10/25		
5	✓	Handgun (Black Berretta)	10/25		
6	✓	Handgun (Black)	10/25		
7	✓	Suicide Case	10/25		
8	x	CD of Video interview of Ryan ^{by} Strasser	10-25 2005	✓	
8A	x	Transcript of audio of Exh. #8	↓		
9	x	Copy of Independent Living for Ryan	10-26 2005		hold
(10)	x	Copy of letter to Dad from Ryan	↓		
11	x	Gray padded ear protectors	↓	11-17 2005	
12	x	Black padded ear protectors	↓		
13	x	CD/Video of interview of Alec by Strasser	10-26 2005	↓	
13A	x	Transcript of audio of Exh. #13	10-26 2005		
14	x	Audio tape of Strasser interview w/ Alec	10-27 2005	11-17 2005	
14A	x	Transcript of audio tape Exh. #14	↓		
15	x	CD & Video interview of Claire by C. Warhol	↓	11-17 2005	
15A	x	Transcript of audio of Exh. #15	↓		
16	x	Copy of letter to Sid Siemer re: lawsuit	11-02 2005	11-17 2005	
17	x	5 pg. copy of letter "Dear Sue"	11-02 2005	✓	✓
18	x	11 pg. copy of letter from Susan to her Mom	↓	✓	
19	x	6 pg. copy of letter by Glen Siemer	↓	✓	
20	x	3pg. copy letter from Terri "Hi Sue"	↓	✓	

I HEREBY ACKNOWLEDGE RECEIPT OF ALL EXHIBITS LISTED ABOVE, EXCEPT ANY EXHIBITS

MARKED "RETURNED". Deputy Clerk _____ Date: _____

List of Exhibits

Exh. No.	Offered By		Description	ID	ADMIT	REDACTED
	P	D				
18A	X		Susans brother Glen Siemars letter + writings	11-02 2005	✓	hold
18B	X		Attached page by Susan Hamlin	↓	✓	hold
21	X		3pg. yellow legal-sized letter, notes of R. Hamlin	↓	✓	hold
22	X		Small flowered (letter) from Sid Siemar to "Sue"	↓	✓	
23	X		Orig. letter 5 1/2" x 9" from Glen "Howdy"	↓	✓	
24	X		Orig. letter from Susan to her Mother	↓	✓	
25	X		2 pg. copy of card/writing with underlines, etc.	↓	✓	
26	X		Black calendar book "At-A-Glance" 8"x11"	11-03 2005	11-17 2005	
27	X		CD/Video of house condition, Hamlin residence	↓	↓	
28	X		CD of audio interview 2-05-04 Lensing of Susan	11-02 2005	↓	
28A	X		Transcript of audio on Exhibit #28	↓	11-17 2005	
29	X		CD of audio int. 2-26-04 w/ Susan	↓	11-17 2005	
29A	X		Transcript of audio on Exhibit #29			
30	X		CD of audio int. 2-28-04 w/ Susan	11-02 2005	11-17 2005	
30A	X		Transcript of audio on Exhibit #30	11-03 2005		
31	X		CD/Video of 3-01-04 w/ Susan		11-17 2005	
31A	X		Transcript of audio on Exhibit #31	11-03 2005		
32	X		4pg. letter "Dear Dad"	↓	11-17 2005	
33	X		SMALL ENVELOPE w/ NOTE	↓		
34	X		2 pg. copy of front + back of counseling Appt. reminder	11-02 2005	↓	
35	X		Med. yellow envelope containing Sm. Appointment	↓	↓	
36	X		CD/audio of Superbowl Sunday 2004 Hamlins	11-03 2005	↓	
36A	X		Transcript of Exh. #36	↓		
37	X		CD/audio of Hamlin + Susan	↓	11-17 2005	
37A	X		Transcript of Exh. #37	↓		OUT
38	X		Papers + phone book pages	11-03 2005	✓	hold
39	X		Legal-size yellow paper w/writings "Margaret"	11-03 2005	✓	hold
40	X		3 pgs. orig. lined paper w/ "Repudiate Lying"	↓	✓	hold
41	X		Legal-size yellow paper w/ "Howard N. Milly"	↓	✓	hold

List of Exhibits

Exh. No.	Offered By		Description	ID	ADMIT	REDACTED
	P	D				
129		X	1 pg. copy "Listened to body pains"	11-10 2005		h
130		X	3 pg. copy "Lisa"	↓		
131		X	1 pg. copy "Discoveries - Memories"	11-10 2005		
132		X	1 pg. copy "Is he considering molest"	11-10 2005	↓	
133		X	37 pg docs. "Legal Mail"	11-10 05		Out
133.A		X	1 pg. copy "Current dissatisfaction sparks..."			
133.B		X	1 pg. copy "Keep the feeling"			
133.C		X	1 pg. copy "the secret"			
133.D		X	1 pg. copy "1983 Sept"			
133.E		X	1 pg. copy "1984 Oct. 20"			
133.F		X	1 pg. copy "1991 Feb/March"			
133.G		X	1 pg. copy "2001 June"			
133.H		X	1 pg. copy "2000 Feb - 2000"			
133.I		X	1 pg. copy "Sid with Ryan"			
133.J		X	1 pg. copy "of note"			
133.K		X	1 pg. copy "Sue's memories of Satan"			
133.L		X	1 pg. copy "Memories"			
133.M		X	1 pg. copy "Time"			
133.N		X	1 pg. copy "I was taught that Christian"			
133.O		X	1 pg. copy "Picnic at Goat Rock, CA" 2 photos			
133.P		X	1 pg. copy "Info for Strasser"			
133.Q		X	1 pg. copy "confined to laundry room"			
133.R		X	1 pg. copy envelope to "Lisa"			
133.S		X	1 pg. copy "Lisa - As you now know"			
133.T		X	1 pg. copy "you have been involved in"	↓		↓
134		X	1 pg. copy "Glen called 11/3"	11-10 05	✓	↓
* 29.B	X		Audio tape of 2-26-04 Interview of Susan	↓		Out
* 28.B	X		Audio tape of 2-05-04 Interview of Susan	↓		Out

List of Exhibits

Exh. No.	Offered By		Description	ID	ADMIT	REDACTED
	P	D				
135		✓	Case Narrative by Det. Murphy	11/10		Out
136		✓	Wish Survey for Alce	11/10	11-17 2005	Obj
137	x		2 pg. copy "January 12, 2004 Dear Glen"	11-15 2005		Out
138	x		9 pg. copy "Health Record" baby book	↓	✓	
139	x		3 pg. copy Yearbook signatures	↓	✓	
140	x		5 pg. copy of letter "Thursday, September 04, 2003"	11-15 2005	✓	✓
141	x		DVD of photos #142 to #174 (Meekma)		11-17 2005	
142	x		8 1/2"x11" hand holding ruler next to 2 calves of color copy of photo: person - inner calf.		11-15 2005	
143	x		" " photo: hand holding ruler by shin of leg			
144	x		" " photo: ruler by thigh - hip to knee side view rt. side			
145	x		" " photo: ruler by hip - hip to mid thigh view - rt.			
146	x		" " photo: ruler by inner thigh - crotch to knee view left leg			
147	x		" " photo: ruler by hip - buttock area - left side			
148	x		" " photo: " lower back			
149	x		" " photo: " stomach area - front view			
150	x		" " photo: " rt. side + back buttocks + lower back			
151	x		" " photo: " left side + hip area			
152	x		" " photo: ruler by back side of right shoulder			
153	x		" " photo: ruler by back side of left arm			
154	x		" " photo: front-view of woman's face			
155	x		" " photo: view behind left ear			
156	x		" " photo: side view of left ear + cheek			
157	x		" " photo: rt. side view of face + hair, mouth corner + back			
158	x		" " photo: ruler by rt. jawline + under chin			
159	x		" " photo: ruler by rt. side of face at angle	↓		
160	x		" " photo: ruler by rt. corner view of face above chin	11-15 '05		
161	x		" " photo: left ear + cheek	↓		
162	x		" " photo: behind left ear	↓		
163	x		" " photo: ruler by left forearm - top	↓	✓	

List of Exhibits

Exh. No.	Offered By		Description	ID	Admit	Redact
	P	D				
219	X		CD of photos: Ex # 186 to # 218	11-17 2005		OUT
220	X		Envelope addressed to Rita Haggerty	11-17 2005		OUT
221	X		8"x11" paper w/ image of rib cage	↓	11-17 2005	
222	X		8"x11" paper w/ image of nose	↓	↓	
223	X		CD/audio of 2-11-04 phone message Macumber	11-17 2005	11-17 2005	
223-A	X		Transcript of Exh. # 223	↓		OUT
224	X		SDT for Lake Natoma Inn (wit. Solberg)	11-17 2005	11-17 2005	
225	X		Power Point (Dr. Arnold + Ex. #s 221+222)	↓		OUT
226	X		1 pg. copy "Power And Control Wheel"	11-29 2005	11-29 2005	
227	X		1 pg. picture of tan-colored wall with letters ^{pink-ish}	11-29 2005	11-29 2005	
228		X	2pg. letter from Sharon Bollum to Det. Strasser	11-30 2005		OUT
* 35A	X		Small card orthodontic appointment reminder	11-30 2005	✓	
229	X		CD/audio of message to Lisa Clum	11-30 2005	11-30 2005	
229-A	X		Transcript of Exh. # 229	↓	✓	
230	X		Cardboard box containing shredded books etc.	11-30 2005	✓	
231		X	1 pg. copy w/ red underlines "Sue - When I read..."	↓	✓	
232		X	2pg letter Giromis and Aguire	↓		OUT
233		X	2pg doc. "Terri Htr., phone calls"	↓		OUT
234		X	1 pg. copy "Dear Sue" September 5, 2003	↓		OUT
235		X	3pg. letter "Terri, Your letter is a pathetic..."	↓	✓	
236		X	Card "From The Two Of Us"	↓	✓	
237		X	1pg. copy "Accusations Rick has made"	11-30 2005	✓	
238	X		8"x11" color pic. of woman's head, side view	12-01 2005	12-01 2005	
239	X		8"x11" color pic. of woman's head, tilted up	↓	↓	
240		X	1 pg. copy "Call For Service Record"	12-01 2005		OUT
241	X		8"x11" color pic. of flowered cloth w/ stitched squares ^{black in upper left corner}	12-01 2005	12-01 2005	
242	X		8"x11" color pic. of " " black gloved hand	↓	↓	
243	X		8"x11" color pic. of flowered cloth w/ small stain	↓	↓	
244	X		" " of gray chair seat + various papers	12-01 2005	12-01 2005	

List of Exhibits

Exh. No.	Offered By		Description	ID	Admit	Redact
	P	D				
245	X		8"x11" color pic. of: room, pink bedding & misc.	12-01 2005	12-01 2005	
246	X		" " : black shelf w/ files and "DUI Contract"			
247	X		" " : floor, file drawers, papers, gray ^{colored} crate etc.			
248	X		" " : floor, gray-colored crate + coiled phone ^{rt. edge} cord			
249	X		" " : top of wash machine w/ red smear	↓	↓	
250	X		Black Paintball mask	↓		
251	X		Black Tire Iron	↓		
252	X		Paper grocery bag w/ 3 cans of spray paint	↓	✓	
253	X		Sm. box of "Snake shot" ammunition	12-01 2005	✓	
254	X		Sm. evid. env. w/ torn wedding photo			Out
255	X		Bag of 11 books		✓	
256	X		Bag of misc. + "Cares Jr" wrapper		✓	
257	X		4 pg. doc. "Affidavit of Custodian of Records"		✓	
258	X		10 pg. doc. Subpoenaed Records: Berkeley	↓	✓	
259	X		CD/Powerpoint Murphy and Hoagland	12-01 2005	✓	
260	X		CD/powerpoint Lensing pictures		✓	
261	X		CD/Powerpoint Hadjes pictures	↓	✓	
262		X	4 pg. curriculum vitae Marcel B. Matley	12-06 2005		Out
263		X	6 pg. Professional Publications of Mr. Matley			
264		X	3 pg. Testimonies of Marcel B. Matley			
265		X	Lg. fold-out board "Indicators of Writing..."			
266		X	Lg. boards, sample of handwriting			
267		X	8 pg. Bibliography - Effects of Stress on Handwriting	↓		↓
268		X	Curriculum vitae of Colin Ross (48 pg.)	↓		Out
269	X		1 pg. copy of e-mail dated 11-06-03 to Jennifer	12-07 2005	✓	
270		X	1 pg. copy of page 3 of Kate Campbell Craven's notes	12-08 2005		Out
271		X	1 pg. copy "I stood up to Dad..."	12-08 2005	✓	
272		X	2 pg. letter 4-18-03 "Sidney, I am writing to notify..."		✓	
273		X	4 pg. letter "Dear Dad, This is a letter..."	↓	✓	

ack
by

List of Exhibits

Exh. No.	Offered By		Description	ID	Admit	Redact
	P	D				
274		X	1 pg. fax "Child Molester Alert - Beware of Sid Sierra"	12-08 2005	✓	
275		X	1 pg. doc. "Memorandum... Child Molest Alert"	↓	✓	
276		X	2 pg. letter "Dear Judy, I am appealing to you..."	↓	✓	
277		X	1 pg. letter copy from Gromis & Aguirre re: ^{Gentlemen's} agreement	↓	✓	
278		X	5 pg. orig. notes "Empathy for Rick - 1st priority"	↓	✓	
279		X	2 pg. doc. "Empathy for Rick - first priority ^{for} change"	12-08 2005	✓	
280		X	1 pg. copy "Pray Immediately..."	↓	✓	
281		X	1 pg. copy "That triggers anger..."	↓	✓	
282		X	1 pg. copy of e-mail "Dear AHA, This is Rick..." ¹¹⁻⁰⁷⁻⁰³	12-13 2005	✓	
283		X	1 pg. copy of e-mail "Good Morning. I found Laura" ¹¹⁻⁰⁸⁻⁰³		✓	
284		X	1 pg. copy of e-mail "Susan, still reeling from your call" ¹²⁻⁰⁶⁻⁰³		✓	
285		X	1 pg. copy of letter to "Nanci Vallenti"		✓	
286		X	1 pg. copy of note "12-29-03 Susan called Chris..." ^{Dup # 91}		✓	QUT Dupl.
287		X	3 pg. copy of letter "Mr. Aguirre" Jan. 05, 2004		✓	
288		X	1 pg. copy of e-mail "Dear Sue, It's been many years..." ¹⁻⁰⁷⁻⁰⁴ ^{from Lora}		✓	QUT Dupl.
289		X	1 pg. copy of e-mail "Hello Sue and Rick" ⁰¹⁻⁰⁹⁻⁰⁴ from Nancy		✓	
290		X	1 pg. copy of note "The LEGAL PAD"	↓	✓	
291		X	1 pg. copy of note "Book of positive mantras..." ^{Dupl. of # 131}	12-13 2005	✓	
292		X	1 pg. copy of note "Discoveries - memories"		✓	QUT Dupl.
293		X	1 pg. copy of note "I was taught that Christian..." ^{Duplicate # 139}		✓	QUT Dupl.
294		X	4 pg. copy of notes, incl. "Snuff Film..."	↓	✓	
295		X	4 pg. copy of notes "1984 Engagement"	12-13 2005	✓	
296		X	Lg. diagram by Richard Hamlin	↓	✓	
297		X	CD/video of Richard Hamlin interview 2-28-04	12-14 2005	✓	
297A		X	Transcript of audio portion of Exh. # 297	12-14 2005		
298	X		8x14" yellow paper"	12-14 2005	✓	
299	X		2 pg. letter copy from Hamlin to Aguirre Dec. 03, 2003		✓	
300	X		2 pg. letter copy from Hamlin to Aguirre Dec. 07, 2003		✓	
301	X		2 pg. letter copy from Gromis & Aguirre June 26, 2003	↓	✓	

SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO
495 Main Street
Placerville, CA 95667

People of the State of California
VS.
RICHARD WILLIAM HAMLIN

Case No: P04CRF0132

MINUTE ORDER

=====

HEARING RE: RESTITUTION

Date: 11/03/06 Time: 4:00 pm Dept/Div: 2

=====

Charges: 1) 206 PC-F C, 2) 273A(B) PC-M C, 3) 273A(B) PC-M C, 4) 273A(B)
5) 245(A) (1) PC-F D, 6) 422 PC-F C, 7) 273.5(A) PC-F Q
--- MORE CHARGES for this Case/defendant ---

Honorable Judge EDDIE T. KELLER presiding
Clerk: Dahlgren S.
Court Reporter DeLacy K.

Deputy District Attorney V. ASHWORTH present.
Defendant is present IN CUSTODY.
Defendant proceeds in Propria Persona.
Co-Counsel Robert Banning present.

At 15:20 p.m. the case is called early as the court
calendar cleared.
All parties are present.

The Defendant and Defense Counsel R. Banning
have read the paperwork regarding restitution.
People's Exhibit(s) #A: Packet "Claimant Ryan Hamlin" is/are
marked for ID purposes.
People's Exhibit(s) #B: Packet "Claimant Alec Hamlin" is/are
marked for ID purposes.
People's Exhibit(s) #C: Packet "Claimant Clare Hamlin" is/are
marked for ID purposes.
People's Exhibit(s) #D: Packet "Claimant Jennifer Hamlin" is/are
marked for ID purposes.
People's Exhibit(s) #E: Packet "Claimant Susan Hamlin" is/are
marked for ID purposes.

Discussion as put forth on the record and
objections by the Defendant and Defense Cnsl.

At 15:40 p.m. -
Probation Officer B. Kinser present.
COURT ORDERS:

Restitution is granted in the following amounts:

- 1) For Susan Hamlin: \$6428.84 (updated).
- 2) For Ryan Hamlin: \$2800.00.
- 3) For Alec Hamlin: \$4550.00.
- 4) For Clare Hamlin: \$2260.00.
- 5) For Jennifer Hamlin: \$1495.00.

Total amount of victim restitution is \$17533.84
to date.

Case Number : P04CRF0132 People vs. RICHARD HAMLIN
=====

COURT ORDERS:

Restitution is ongoing and the amounts may be modified in the future.

Oral motion on behalf of Defense regarding reduce restitution fines pursuant to Cal. Penal Code Sections 1202.4 and 1202.45. Motion is GRANTED.

COURT ORDERS:

Restitution fine pursuant to California Penal Code Section 1202.4 is modified to the amount of \$1000.00.

Parole revocation restitution fine pursuant to Penal Code Section 1202.45 is modified to the amount of \$1000.00.

The Court orders an amended Abstract Of Judgment be prepared.

The Court finds that the Defendant has the ability to pay fines - fees and restitution while in prison and after released from prison.

As to time credits and Counts 2 - 3 and 4; misdemeanor charges concurrent vs. consecutive: Argument by Counsel as put forth on the record. The Court rules that as to Counts 2 - 3 and 4; time credits pursuant to Penal Code Section 2933.1 shall apply. The Court reaffirms that the sentences for Counts 2 - 3 and 4 shall run consecutive to each other and any other time imposed on this case.

COURT ORDERS:

The Defendant shall receive 15% good time / work time pre-sentence conduct credits for all charges plus actual time credits. The credit shall be applied to the consecutive six (6) - month terms for Counts 2 - 3 and 4 first and any remaining good time / work time credits shall not be applied until the Defendant has reached the Minimum Eligibility Parole Date (MEPD)

COURT ORDERS:

Probation Officer Ben Kinser shall recalculate the pre-sentence time credits according to the above order.

People's Exhibits #A through #E are admitted.

As to Counts 2 - 3 and 4; the Court finds under Rule 4.425 that the crimes and their objectives

11/14/06

Page: 3

Case Number : P04CRF0132 People vs. RICHARD HAMLIN
=====

were independent of each other.
The crimes involved separate victims and
separate harm to different human beings.

The Court reaffirms the order given on the
judgment and sentencing date of 09-29-06
regarding a lifetime restraining order for the
victims.

CUSTODY STATUS

Remains remanded to the custody of the Sheriff.
Sheriff to deliver defendant to California Department of
Corrections at Deuel.

=====MINUTE ORDER END=====

Dispo

vs./and

Page 1

Case No. PO4CRF0132

Date: 11-03-06

[illegible]

MARKED "RETURNED". Deputy Clerk _____ Date: _____

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

EL DORADO CO. SUPERIOR CT.

FILED NOV 02 2006

BY

Deputy

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

Vs

RICHARD WILLIAM HAMLIN,

Defendant.

COURT OF APPEAL
NO.

EL DORADO COUNTY SUPERIOR
COURT CASE NO. P04CRF0132 AND
P05CRF0161

**NOTICE OF FILING OF
AMENDED NOTICE OF
APPEAL**

TO: DEENA C. FAWCETT, CLERK
COURT OF APPEAL
THIRD APPELLATE DISTRICT
900 N STREET, ROOM 400
SACRAMENTO, CA 95814

An Amended Notice of Appeal was filed on November 2, 2006 by RICHARD WILLIAM HAMLIN,
Defendant.

List of Attorneys/Pro Per Litigants of Record:

<u>Name, Address, Telephone No.</u>	<u>State Bar No.</u>	<u>Represents:</u>
VICKI ASHWORTH, EL DORADO COUNTY DISTRICT ATTORNEY 515 MAIN STREET PLACERVILLE, CA 95667 (530) 621-6472	189353	THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF
ROBERT BANNING, EL DORADO COUNTY PUBLIC DEFENDER 630 MAIN STREET PLACERVILLE, CA 95667 (530) 621-6440 (CO-COUNSEL)	83990	RICHARD WILLIAM HAMLIN, DEFENDANT
RICHARD WILLIAM HAMLIN EL DORADO COUNTY JAIL 300 FORNI ROAD PLACERVILLE, CA 956567 TELEPHONE NO. UNKNOWN (CO-COUNSEL)		RICHARD WILLIAM HAMLIN, DEFENDANT, PRO PER

CMS

Court Reporters:

Name, Address, Telephone No.

CSR No.

KATHY DELACY
EL DORADO CO. SUPERIOR COURT
495 MAIN STREET
PLACERVILLE, CA 95667
(530) 621-6435

5432

CINDY BILLALON
P.O. BOX 2011
PLACERVILLE, CA 95667
(530) 621-0513

10618

BOBBIE SOROKA
300 ESATTO PLACE
EL DORADO HILLS, CA 95762
(916) 939-8887

11633

SARAH STROMBERG
EL DORADO CO. SUPERIOR COURT
495 MAIN STREET
PLACERVILLE, CA 95667
(530) 621-6713

3154

CYNTHIA ELLERING
EL DORADO CO. SUPERIOR COURT
2850 FAIRLANE COURT
PLACERVILLE, CA 95667
(530) 621-7463

9190

ROBBI JOY
4173 BORDERS DRIVE
EL DORADO HILLS, CA 95762
(916) 933-2681

8929

DATED: NOVEMBER 2, 2006

EL DORADO COUNTY SUPERIOR COURT

BY:


LYNN CAVIN, Appeals Clerk

CLERK'S CERTIFICATE OF MAILING

I, LYNN CAVIN, Deputy Clerk of the Superior Court of the County of El Dorado, State of California, do hereby certify that I am a citizen of the United States and employed in the County of El Dorado; I am over the age of eighteen years and not a party to the within action; my business address is Superior Court of the State of California, County of El Dorado, 495 Main Street, Placerville, CA 95667; and that I delivered a copy of **AMENDED NOTICE OF APPEAL FILED NOVEMBER 2, 2006; AND, NOTICE OF FILING OF AMENDED NOTICE OF APPEAL FILED NOVEMBER 2, 2006** to the individual(s) listed below:

VICKI ASHWORTH, EL DORADO
COUNTY DISTRICT ATTORNEY
515 MAIN STREET
PLACERVILLE, CA 95667

ROBERT BANNING, EL DORADO
COUNTY PUBLIC DEFENDER
630 MAI STREET
PLACERVILLE, CA 95667

RICHARD WILLIAM HAMLIN
EL DORADO COUNTY JAIL
300 FORNI ROAD
PLACERVILLE, CA 95667

I am familiar with the business practice of El Dorado County Superior Court with regard to collection and processing of documents for mailing. The documents described above were placed for collection and mailing in Placerville, California, through either the United States Post Office, Inter-Departmental Mail or Courthouse Attorney Box.

Executed on November 2, 2006 at Placerville, California.

EL DORADO COUNTY SUPERIOR COURT

BY: _____

LYNN CAVIN, APPEALS CLERK

**Court of Appeal
State of California
Third Appellate District
CRIMINAL APPEAL INFORMATION SHEET**

- ☐ Notice of appeal complies with rule 30(b). If not, do not send. See rule 30(b)(3).
- ☒ Rule 30(b) is not applicable to this appeal and it is otherwise operable. See Rule 30(a).
- ☒ Notice of appeal is timely per rule 30.1(a). If not, do not send. See rule 30.1(c)

If the appeal is operable, please complete this form. **EL DORADO CO. SUPERIOR CT.**

- Defendant's Name: RICHARD WILLIAM HAMLIN
- Defendant's CDC Number (if known): _____
- Defendant's Date of Birth: APRIL 15, 1960
- Institution to which appellant has been sent or last known address, if placed on probation:

CALIFORNIA DEPARTMENT OF CORRECTIONS
RECEPTION CENTER
- County: EL DORADO
- Trial Court Case Number(s) appealed: P04CRF0132 AND P05CRF0161
- Sentencing Judge: EDDIE T. KELLER, ASSISTANT PRESIDING JUDGE
- Nature of Conviction (e.g. murder, robbery, etc.): IN P04CRF0132: CT. 1 – PC 206 (TORTURE); CT. 6 – PC 422 (CRIMINAL THREAT); CTS. 9, 13 & 17 – PC 273.5(A) (CORPORAL INJURY TO SPOUSE) IN P05CRF0161: INDICTMENT BY GRAND JURY – CT. 1 (TORTURE); CTS. 2, 3 & 4 (CHILD ABUSE & ENDANGERMENT); CTS. 5 & 18 (ASSAULT-PRODUCE BODILY INJURY); CTS. 6, 11 & 15 (CRIMINAL THREATS); CTS. 7, 9, 13 & 17 (CORPORAL INJURY TO SPOUSE); CTS. 8 & 12 (FALSE IMPRISONMENT BY VIOLENCE); CTS. 10 & 14 (ASSAULT WITH DEADLY WEAPON); CT. 16 (DISCHARGE OF FIREARM)
- Was trial counsel retained? ☐ Yes, or ☒ No
- Co-defendant(s) name(s), if any:

☐ Has co-defendant filed a notice of appeal? ☐ Yes, or ☐ No

☒ Forward two complete sets of the following documents to the appellate court:

1. File stamped notice of appeal and notice of filing notice of appeal.
2. File stamped abstract of judgment or order being appealed.
3. If applicable, P.C. section 1237.5 statement–Certificate of Probable Cause. Rule 30(b) & (c).
4. If applicable, order of the trial court either granting or denying a Certificate of Probable Cause. Rule 30(c).
5. If applicable, copies of your letter advising defendant that the notice of appeal was filed but is inoperable, as there was no statement as required by 1237.5 of the P.C., or that the trial court has denied the certificate of probable cause, etc., but the appeal will proceed on other grounds such as sentencing, if appropriate.

NOVEMBER 2, 2006

Office of the Clerk: 900 N Street, Room 400, Sacramento, CA 95814
Telephone: 916-654-0209

Office Hours: 8:30 a.m. – 5:00 p.m. Monday – Friday, court holidays excepted

CMS

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

EL DORADO CO. SUPERIOR CT.

FILED NOV 02 2006

BY

Deputy

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

Vs

RICHARD WILLIAM HAMLIN,

Defendant.

COURT OF APPEAL
NO.

EL DORADO COUNTY SUPERIOR
COURT CASE NO. P04CRF0132
AND P05CRF0161

**CLERK'S CERTIFICATE
OF MAILING**

I, LYNN CAVIN, Deputy Clerk of the Superior Court of the County of El Dorado, State of California, do hereby certify that I am a citizen of the United States and employed in the County of El Dorado; I am over the age of eighteen years and not a party to the within action; my business address is Superior Court of the State of California, County of El Dorado, 495 Main Street, Placerville, 95667; and that I delivered a copy of the **AMENDED NOTICE OF APPEAL FILED NOVEMBER 2, 2006 (ALL MINUTES ORDERS PREVIOUSLY PROVIDED)** to the individual(s) listed below:

KATHY DELACY
EL DORADO COUNTY SUPERIOR COURT
495 MAIN STREET
PLACERVILLE, CA 95667

SARAH STROMBERG
EL DORADO COUNTY SUPERIOR COURT
495 MAIN STREET
PLACERVILLE, CA 95667

CYNTHIA ELLERING
EL DORADO COUNTY SUPERIOR COURT
2850 FAIRLANE COURT
PLACERVILLE, CA 95667

CINDY BILLALON
P.O. BOX 2011
PLACERVILLE, CA 95667

BOBBIE SOROKA
300 ESATTO PLACE
EL DORADO HILLS, CA 95762

I am familiar with the business practice of El Dorado County Superior Court with regard to collection and processing of documents for mailing. The documents described above were placed for collection and mailing in Placerville, California, through either the United States Post Office, Inter-Departmental Mail or Courthouse Attorney Box.

Executed on November 2, 2006 at Placerville, California.

EL DORADO COUNTY SUPERIOR COURT

BY:

LYNN CAVIN, APPEALS CLERK

CMS

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

EL DORADO CO. SUPERIOR CT.

FILED NOV 02 2006

BY

Deputy

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

Vs

RICHARD WILLIAM HAMLIN,

Defendant.

COURT OF APPEAL
NO.

EL DORADO COUNTY SUPERIOR
COURT CASE NO. P04CRF0132
AND P05CRF0161

**CLERK'S CERTIFICATE
OF MAILING**

I, LYNN CAVIN, Deputy Clerk of the Superior Court of the County of El Dorado, State of California, do hereby certify that I am a citizen of the United States and employed in the County of El Dorado; I am over the age of eighteen years and not a party to the within action; my business address is Superior Court of the State of California, County of El Dorado, 495 Main Street, Placerville, 95667; and that I delivered a copy of the **AMENDED NOTICE OF APPEAL FILED NOVEMBER 2, 2006; AMENDED REQUEST FOR APPOINTMENT OF ATTORNEY FILED NOVEMBER 2, 2006; NOTICE OF FILING OF AMENDED NOTICE OF APPEAL FILED NOVEMBER 2, 2006; CRIMINAL APPEAL INFORMATION SHEET DATED NOVEMBER 2, 2006; MINUTE ORDER RE JUDGMENT & SENTENCING DATED SEPTEMBER 29, 2006 IN P04CRF0132; ABSTRACT OF JUDGMENT FILED OCTOBER 23, 2006 IN P04CRF0132; MINUTE ORDER RE INDICTMENT DATED APRIL 15, 2005 IN P05CRF0161; MINUTE ORDER DATED OCTOBER 11, 2005 IN P05CRF0161** to the individual(s) listed below:

DEENA C. FAWCETT, CLERK
COURT OF APPEAL
THIRD APPELLATE DISTRICT
900 N STREET, ROOM 400
SACRAMENTO, CA 95814

I am familiar with the business practice of El Dorado County Superior Court with regard to collection and processing of documents for mailing. The documents described above were placed for collection and mailing in Placerville, California, through either the United States Post Office, Inter-Departmental Mail or Courthouse Attorney Box.

Executed on November 2, 2006 at Placerville, California.

EL DORADO COUNTY SUPERIOR COURT

BY:

LYNN CAVIN, APPEALS CLERK

CMS

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

EL DORADO CO. SUPERIOR CT.

FILED NOV 02 2006

BY

Lynn Cavin
Deputy

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs

RICHARD WILLIAM HAMLIN,

Defendant.

COURT OF APPEAL
NO.

EL DORADO COUNTY SUPERIOR
COURT CASE NO. P04CRF0132

**CLERK'S CERTIFICATE
OF MAILING**

I, LYNN CAVIN, Deputy Clerk of the Superior Court of the County of El Dorado, State of California, do hereby certify that I am a citizen of the United States and employed in the County of El Dorado; I am over the age of eighteen years and not a party to the within action; my business address is Superior Court of the State of California, County of El Dorado, 495 Main Street, Placerville, 95667; and that I delivered a copy of the **MINUTE ORDERS IN CASE NO. P05CRF0161 DATED OCTOBER 11, 2005; SEPTEMBER 27, 2005; SEPTEMBER 26, 2005; SEPTEMBER 15, 2005; AUGUST 19, 2005; AUGUST 8, 2005; JUNE 27, 2005; MAY 13, 2005; APRIL 29, 2005; APRIL 15, 2005; APRIL 15, 2005; AND; APRIL 15, 2005** to the individual(s) listed below:

KATHY DELACY
EL DORADO COUNTY SUPERIOR COURT
495 MAIN STREET
PLACERVILLE, CA 95667

SARAH STROMBERG
EL DORADO COUNTY SUPERIOR COURT
495 MAIN STREET
PLACERVILLE, CA 95667

I am familiar with the business practice of El Dorado County Superior Court with regard to collection and processing of documents for mailing. The documents described above were placed for collection and mailing in Placerville, California, through either the United States Post Office, Inter-Departmental Mail or Courthouse Attorney Box.

Executed on November 2, 2006 at Placerville, California.

EL DORADO COUNTY SUPERIOR COURT

BY:

Lynn Cavin
LYNN CAVIN, APPEALS CLERK

CMS

1 RICHARD HAMLIN
2 300 Forni Road
3 Placerville, CA 95667
4 (530) 621-6000

EL DORADO CO. SUPERIOR CT.

FILED NOV 02 2006

BY Lynn Carlin
Deputy

5 In Propria Persona

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF EL DORADO

10 PEOPLE OF THE STATE OF CALIFORNIA,

CASE NO.: P04CRF0132
P05CRF0161

11 Plaintiff and Respondent,

12 v.

13 RICHARD HAMLIN,

14 Defendant and Appellant.

15 _____/
16 AMENDED REQUEST FOR APPOINTMENT OF ATTORNEY

17 I, RICHARD HAMLIN, appellant in the above-entitled cause
18 now pending in the Court of Appeal, Third Appellate District, do
19 request the Court of Appeal to appoint an attorney to represent
20 me in this matter.

21 In support of such request, I do hereby declare under
22 penalty of perjury that I am presently in the custody of the
23 Department of Corrections and I have no income or assets except
24 as follows: None

25 Executed this 2nd day of November, 2006, at Placerville,
26 California.

27 Richard Hamlin
28 RICHARD HAMLIN
Appellant

CMS

1 RICHARD HAMLIN
2 300 Forni Road
3 Placerville, CA 95667
4 (530) 621-6000

5 In Propria Persona

EL DORADO CO. SUPERIOR CT.

FILED NOV 02 2006
BY Lynn Carr
Deputy

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF EL DORADO

10 PEOPLE OF THE STATE OF CALIFORNIA,
11
12 Plaintiff,

CASE NO.: P04CRF0132
P05CRF0161
AMENDED NOTICE OF
APPEAL

13 vs.


14 RICHARD HAMLIN,

15 Defendant.
16 _____/

17 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

18 PLEASE TAKE NOTICE that Defendant above-named, RICHARD
19 HAMLIN, hereby appeals from the judgment and sentence of the
20 above-entitled Court, entered September 29, 2006, following his
21 Jury Trial, in the above-named action, to the Court Of Appeal,
22 Third Appellate District.

23 Executed on November 2, 2006, at Placerville, California.

24 
25 RICHARD HAMLIN
26 Defendant/Appellant
27
28

CMS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO
495 Main Street
Placerville, CA 95667

People of the State of California
VS.
RICHARD WILLIAM HAMLIN

Case No: P04CRF0132

MINUTE ORDER

=====

HEARING RE: RESTITUTION

Date: 10/30/06 Time: 3:30 pm Dept/Div: 2

=====

Charges: 1) 206 PC-F C, 2) 273A(B) PC-M C, 3) 273A(B) PC-M C, 4) 273A(B)
5) 245(A)(1) PC-F D, 6) 422 PC-F C, 7) 273.5(A) PC-F Q
--- MORE CHARGES for this Case/defendant ---

Honorable Judge EDDIE T. KELLER presiding
Clerk: Dahlgren S.
Court Reporter DeLacy K.
Bailiff W. THORNTON

Deputy District Attorney V. ASHWORTH present.
Defendant is present IN CUSTODY.
Defendant proceeds in Propria Persona.
Co-Defense Counsel Robert Banning present.

Probation Officer Ben Kinser present.

The records from the victim's compensation board
subpnaed by the People just arrived at the
Main Street court today.
The People did not have the documents and so
could not provide copies to Defense.
The documents are now released to the People
and they will provide copies to the Defense.

The restitution hearing must be continued.
Hearing continued pursuant to Stipulation by parties to
11/03/2006 at 16:00 in Department 2.

Issues regarding the lifetime restraining order
and the percentage of pre-sentence custody
credits will be discussed on 11-03-06.
The Court directs the People to provide any
other information she may have regarding the
two subjects to Defense by 11-03-06.

The Court and Counsel clarify that this case
number and #P05CRF0161 should be included
on the appeal documents.

CUSTODY STATUS

Remains remanded to the custody of the Sheriff.
Bail to remain as previously set.

cc: DIST ATTY / PUB DEF

10/31/06

Page: 2

Case Number : P04CRF0132 People vs. RICHARD HAMLIN
=====

RICHARD HAMLIN C/O JAIL

=====MINUTE ORDER END=====

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO
495 Main Street
Placerville, CA 95667

People of the State of California
VS.
RICHARD WILLIAM HAMLIN

Case No: P04CRF0132

MINUTE ORDER

=====

HEARING RE: RESTITUTION

Date: 10/30/06 Time: 3:30 pm Dept/Div: 2

=====

Charges: 1) 206 PC-F C, 2) 273A(B) PC-M C, 3) 273A(B) PC-M C, 4) 273A(B)
5) 245(A)(1) PC-F D, 6) 422 PC-F C, 7) 273.5(A) PC-F Q
--- MORE CHARGES for this Case/defendant ---

Honorable Judge EDDIE T. KELLER presiding
Clerk: Dahlgren S.
Court Reporter DeLacy K.
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Deputy District Attorney V. ASHWORTH present.
Defendant is present IN CUSTODY.
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Main Street court today.
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and they will provide copies to the Defense.

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and the percentage of pre-sentence custody
credits will be discussed on 11-03-06.
The Court directs the People to provide any
other information she may have regarding the
two subjects to Defense by 11-03-06.

The Court and Counsel clarify that this case
number and #P05CRF0161 should be included
on the appeal documents.

CUSTODY STATUS

Remains remanded to the custody of the Sheriff.
Bail to remain as previously set.

cc: DIST ATTY / PUB DEF

11/02/06

Page: 2

Case Number : P04CRF0132 People vs. RICHARD HAMLIN

=====

RICHARD HAMLIN C/O JAIL

=====MINUTE ORDER END=====

=====MINUTE ORDER END=====

Dispo

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

EL DORADO CO, SUPERIOR CT.

FILED OCT 23 2006

BY

Deputy

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

VS

RICHARD WILLIAM HAMLIN,

Defendant.

COURT OF APPEAL
NO.

EL DORADO COUNTY SUPERIOR
COURT CASE NO. P04CRF0132

**NOTICE OF FILING OF
NOTICE OF APPEAL**

TO: DEENA C. FAWCETT, CLERK
COURT OF APPEAL
THIRD APPELLATE DISTRICT
900 N STREET, ROOM 400
SACRAMENTO, CA 95814

A Notice of Appeal was filed on October 19, 2006 by RICHARD WILLIAM HAMLIN, Defendant.

List of Attorneys/Pro Per Litigants of Record:

<u>Name, Address, Telephone No.</u>	<u>State Bar No.</u>	<u>Represents:</u>
VICKI ASHWORTH, EL DORADO COUNTY DISTRICT ATTORNEY 515 MAIN STREET PLACERVILLE, CA 95667 (530) 621-6472	189353	THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF
ROBERT BANNING, EL DORADO COUNTY PUBLIC DEFENDER 630 MAIN STREET PLACERVILLE, CA 95667 (530) 621-6440 (CO-COUNSEL)	83990	RICHARD WILLIAM HAMLIN, DEFENDANT
RICHARD WILLIAM HAMLIN EL DORADO COUNTY JAIL 300 FORNI ROAD PLACERVILLE, CA 95667 TELEPHONE NO. UNKNOWN (CO-COUNSEL)		RICHARD WILLIAM HAMLIN, DEFENDANT, PRO PER

CMS

Court Reporters:

Name, Address, Telephone No.

CSR No.

KATHY DELACY
EL DORADO COUNTY SUPERIOR COURT
495 MAIN STREET
PLACERVILLE, CA 95667
(530) 621-6435

5432

SARAH STROMBERG
EL DORADO COUNTY SUPERIOR COURT
495 MAIN STREET
PLACERVILLE, CA 95667
(530) 621-6713

3154

CYNTHIA ELLERING
EL DORADO COUNTY SUPERIOR COURT
2850 FAIRLANE COURT
PLACERVILLE, CA 95667
(530) 621-7463

9190

CINDY BILLALON
P.O. BOX 2011
PLACERVILLE, CA 95667
(530) 621-0513

10618

BOBBIE SOROKA
300 ESATTO PLACE
EL DORADO HILLS, CA 95762
(916) 939-8887

11633

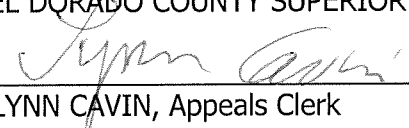
ROBBI JOY
4173 BORDERS DRIVE
EL DORADO HILLS, CA 95762
(916) 933-2681

8929

DATED: OCTOBER 23, 2006

EL DORADO COUNTY SUPERIOR COURT

BY:


LYNN CAVIN, Appeals Clerk

CLERK'S CERTIFICATE OF MAILING

I, LYNN CAVIN, Deputy Clerk of the Superior Court of the County of El Dorado, State of California, do hereby certify that I am a citizen of the United States and employed in the County of El Dorado; I am over the age of eighteen years and not a party to the within action; my business address is Superior Court of the State of California, County of El Dorado, 495 Main Street, Placerville, CA 95667; and that I delivered a copy of **NOTICE OF APPEAL FILED OCTOBER 19, 2006; AND, NOTICE OF FILING OF NOTICE OF APPEAL FILED OCTOBER 23, 2006** to the individual(s) listed below:

VICKI ASHWORTH
EL DORADO COUNTY DISTRICT ATTORNEY
515 MAIN STREET
PLACERVILLE, CA 95667

ROBERT BANNING
EL DORADO COUNTY PUBLIC DEFENDER
630 MAIN STREET
PLACERVILLE, CA 95667

RICHARD HAMLIN
EL DORADO COUNTY JAIL
300 FORNI ROAD
PLACERVILLE, CA 95667

I am familiar with the business practice of El Dorado County Superior Court with regard to collection and processing of documents for mailing. The documents described above were placed for collection and mailing in Placerville, California, through either the United States Post Office, Inter-Departmental Mail or Courthouse Attorney Box.

Executed on October 23, 2006 at Placerville, California.

EL DORADO COUNTY SUPERIOR COURT

BY: _____

LYNN CAVIN, APPEALS CLERK

**Court of Appeal
State of California
Third Appellate District
CRIMINAL APPEAL INFORMATION SHEET**

EL DORADO CO. SUPERIOR CT.

FILED OCT 23 2006

BY: [Signature] Deputy

- ☐ Notice of appeal complies with rule 30(b). If not, do not send. See rule 30(b)(3).
- ☒ Rule 30(b) is not applicable to this appeal and it is otherwise operable. See Rule 30(a).
- ☒ Notice of appeal is timely per rule 30.1(a). If not, do not send. See rule 30.1(c)

If the appeal is operable, please complete this form.

- Defendant's Name: RICHARD WILLIAM HAMLIN
- Defendant's CDC Number (if known): _____
- Defendant's Date of Birth: APRIL 15, 1960
- Institution to which appellant has been sent or last known address, if placed on probation:

EL DORADO COUNTY JAIL
300 FORNI ROAD
PLACERVILLE, CA 95667
(TO BE DELIVERED TO CALIF. DEPT. OF CORRECTIONS RECEPTION CENTER
AFTER RESTITUTION HEARING SCHEDULED FOR 10/30/06)
- County: EL DORADO
- Trial Court Case Number(s) appealed: P04CRF0132
- Sentencing Judge: EDDIE T. KELLER, ASSISTANT PRESIDING JUDGE
- Nature of Conviction (e.g. murder, robbery, etc.): CT. 1 – PC 206 (TORTURE); CT. 6. – PC 422 (CRIMINAL THREAT); CTS. 9, 13 & 17 – PC 273.5(A) (CORPORAL INJURY TO SPOUSE)
- Was trial counsel retained? ☐ Yes, or ☒ No
- Co-defendant(s) name(s), if any:

☐ Has co-defendant filed a notice of appeal? ☐ Yes, or ☐ No

☒ Forward two complete sets of the following documents to the appellate court:

1. File stamped notice of appeal and notice of filing notice of appeal.
2. File stamped abstract of judgment or order being appealed.
3. If applicable, P.C. section 1237.5 statement–Certificate of Probable Cause. Rule 30(b) & (c).
4. If applicable, order of the trial court either granting or denying a Certificate of Probable Cause. Rule 30(c).
5. If applicable, copies of your letter advising defendant that the notice of appeal was filed but is inoperable, as there was no statement as required by 1237.5 of the P.C., or that the trial court has denied the certificate of probable cause, etc., but the appeal will proceed on other grounds such as sentencing, if appropriate.

OCTOBER 23, 2006

Office of the Clerk: 900 N Street, Room 400, Sacramento, CA 95814

Telephone: 916-654-0209

Office Hours: 8:30 a.m. – 5:00 p.m. Monday – Friday, court holidays excepted.

(Rev. 06/09/04)

CMS

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

EL DORADO CO. SUPERIOR CT.

FILED OCT 23 2006

BY

Deputy

THE PEOPLE OF THE STATE
OF CALIFORNIA,

COURT OF APPEAL
NO.

Plaintiff,

EL DORADO COUNTY SUPERIOR
COURT CASE NO. P04CRF0132

VS

RICHARD WILLIAM HAMLIN,

**CLERK'S CERTIFICATE
OF MAILING**

Defendant.

I, LYNN CAVIN, Deputy Clerk of the Superior Court of the County of El Dorado, State of California, do hereby certify that I am a citizen of the United States and employed in the County of El Dorado; I am over the age of eighteen years and not a party to the within action; my business address is Superior Court of the State of California, County of El Dorado, 495 Main Street, Placerville, 95667; and that I delivered a copy of the **NOTICE OF APPEAL FILED OCTOBER 19, 2006; REQUEST FOR APPOINTMENT OF ATTORNEY FILED OCTOBER 19, 2006; NOTICE OF FILING OF NOTICE OF APPEAL FILED OCTOBER 23, 2006; CRIMINAL APPEAL INFORMATION SHEET DATED OCTOBER 23, 2006; MINUTE ORDER RE JUDGMENT AND SENTENCING DATED SEPTEMBER 29, 2006; AND; ABSTRACT OF JUDGMENT FILED OCTOBER 23, 2006** to the individual(s) listed below:

DEENA C. FAWCETT, CLERK
COURT OF APPEAL
THIRD APPELLATE DISTRICT
900 N STREET, ROOM 400
SACRAMENTO, CA 95814

I am familiar with the business practice of El Dorado County Superior Court with regard to collection and processing of documents for mailing. The documents described above were placed for collection and mailing in Placerville, California, through either the United States Post Office, Inter-Departmental Mail or Courthouse Attorney Box.

Executed on October 23, 2006 at Placerville, California.

EL DORADO COUNTY SUPERIOR COURT

BY:

LYNN CAVIN, APPEALS CLERK

CMS

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

EL DORADO CO. SUPERIOR CT.

FILED OCT 23 2006

BY

Lynn Cavin
Deputy

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs

RICHARD WILLIAM HAMLIN,

Defendant.

COURT OF APPEAL
NO.

EL DORADO COUNTY SUPERIOR
COURT CASE NO. P04CRF0132

**CLERK'S CERTIFICATE
OF MAILING**

I, LYNN CAVIN, Deputy Clerk of the Superior Court of the County of El Dorado, State of California, do hereby certify that I am a citizen of the United States and employed in the County of El Dorado; I am over the age of eighteen years and not a party to the within action; my business address is Superior Court of the State of California, County of El Dorado, 495 Main Street, Placerville, 95667; and that I delivered a copy of the **NOTICE OF APPEAL FILED OCTOBER 19, 2006; MINUTE ORDERS DATED SEPTEMBER 29, 2006; SEPTEMBER 29, 2006; SEPTEMBER 1, 2006; SEPTEMBER 1, 2006; AUGUST 28, 2006; AUGUST 10, 2006; AUGUST 8, 2006; JUNE 19, 2006; APRIL 14, 2006; MARCH 13, 2006; FEBRUARY 3, 2006; JANUARY 13, 2006; JANUARY 10, 2006; JANUARY 5, 2006; JANUARY 4, 2006; JANUARY 3, 2006; DECEMBER 29, 2005; DECEMBER 28, 2005; DECEMBER 22, 2005; DECEMBER 21, 2005; DECEMBER 20, 2005; DECEMBER 19, 2005; DECEMBER 16, 2005; DECEMBER 15, 2005; DECEMBER 14, 2005; DECEMBER 13, 2005; DECEMBER 8, 2005; DECEMBER 7, 2005; DECEMBER 6, 2005; DECEMBER 5, 2005; DECEMBER 1, 2005; NOVEMBER 30, 2005; NOVEMBER 29, 2005; NOVEMBER 17, 2005; NOVEMBER 16, 2005; NOVEMBER 15, 2005; NOVEMBER 10, 2005; NOVEMBER 9, 2005; NOVEMBER 8, 2005; NOVEMBER 3, 2005; NOVEMBER 2, 2005; NOVEMBER 1, 2005; OCTOBER 27, 2005; OCTOBER 26, 2005; OCTOBER 25, 2005; OCTOBER 19, 2005; OCTOBER 18, 2005; OCTOBER 13, 2005; OCTOBER 12, 2005; OCTOBER 11, 2005; SEPTEMBER 27, 2005; SEPTEMBER 26, 2005; SEPTEMBER 15, 2005; AUGUST 19, 2005; AUGUST 8, 2005; AUGUST 5, 2005; JUNE 27, 2005; JUNE 8, 2005; MAY 13, 2005; APRIL 29, 2005; APRIL 15, 2005; APRIL 15, 2005; APRIL 1, 2005; MARCH 17, 2005; MARCH 14, 2005; FEBRUARY 25, 2005; FEBRUARY 25, 2005; FEBRUARY 18, 2005; FEBRUARY 14, 2005; FEBRUARY 10, 2005; JANUARY 31, 2005; JANUARY 28, 2005; JANUARY 26, 2005; JANUARY 14, 2005; JANUARY 3, 2005; NOVEMBER 29, 2004; OCTOBER 8, 2004; SEPTEMBER 27, 2004; SEPTEMBER 20, 2004; AUGUST 30, 2004; AUGUST 5, 2004; AUGUST 3, 2004; JULY 30, 2004; JULY 26, 2004; JULY 2, 2004; JUNE 23, 2004; JUNE 21, 2004; JUNE 10, 2004; MAY 27, 2004; MAY 13, 2004; APRIL 29, 2004; APRIL 8, 2004; MARCH 15, 2004; MARCH 5, 2004; AND, MARCH 2, 2004; LIST OF EXHIBITS DATED SEPTEMBER 27, 2004 AND OCTOBER 25, 2005 to the individual(s) listed below:**

CMS

KATHY DELACY
EL DORADO COUNT SUPERIOR COURT
495 MAIN STREET
PLACERVILLE, CA 95667

SARAH STROMBERG
EL DORADO COUNTY SUPERIOR COURT
495 MAIN STREET
PLACERVILLE, CA 95667

CYNTHIA ELLERING
EL DORADO COUNTY SUPERIOR COURT
2850 FAIRLANE COURT
PLACERVILLE, CA 95667

CINDY BILLALON
P.O. BOX 2011
PLACERVILLE, CA 95667

BOBBIE SOROKA
300 ESATTO PLACE
EL DORADO HILLS, CA 95762

I am familiar with the business practice of El Dorado County Superior Court with regard to collection and processing of documents for mailing. The documents described above were placed for collection and mailing in Placerville, California, through either the United States Post Office, Inter-Departmental Mail or Courthouse Attorney Box.

Executed on October 23, 2006 at Placerville, California.

EL DORADO COUNTY SUPERIOR COURT

BY: _____

LYNN CAVIN, APPEALS CLERK

ABSTRACT OF JUDGMENT – PRISON COMMITMENT - INDETERMINATE

[NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-292 ATTACHED]

CR-292

SUPERIOR COURT OF CALIFORNIA, COUNTY OF: EL DORADO			EL DORADO CO. SUPERIOR CT		
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: RICHARD WILLIAM HAMLIN		DOB: 04-15-60	P04CRF0132 -A		
AKA: CII#: M08090085		-B FILED OCT 23 2006			
BOOKING #: 401303		-C BY <i>[Signature]</i>			
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT		-D Deputy			
DATE OF HEARING 09-29-06		DEPT. NO. 2		JUDGE EDDIE T. KELLER	
CLERK S. DAHLGREN		REPORTER K. DeLACY #5432		PROBATION NO. OR PROBATION OFFICER BEN KINSER	
COUNSEL FOR PEOPLE VICKI ASHWORTH			COUNSEL FOR DEFENDANT PRO PER AND ROBERT BANNING		

1. Defendant was convicted of the commission of the following felonies:

- ☒ Additional counts are listed on attachment
1 (number of pages attached)

CNT.	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY			CONCURRENT	CONSECUTIVE	654 STAY
						JURY	COURT	PLEA			
1	PC	206	TORTURE	2004	01-10-06	X					

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

Defendant was sentenced to State Prison for an INDETERMINATE TERM as follows:

4. ☐ LIFE WITHOUT THE POSSIBILITY OF PAROLE on counts
5. ☒ LIFE WITH THE POSSIBILITY OF PAROLE on counts 1
6. a. ☐ 15 years to Life on counts _____ c. ☐ _____ years to Life on counts
- b. ☐ 25 years to Life on counts _____ d. ☐ _____ years to Life on counts
- PLUS enhancement time shown above.
7. ☒ Additional determinate term (see CR-290).
8. Defendant was sentenced pursuant to ☐ PC 667(b)-(i) or PC 1170.12 ☐ PC 667.61 ☐ PC667.7 ☐ other (specify):

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for indeterminate sentences. Attachments may be used but must be referred to in this document.

Page 1 of 2

PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: RICHAED WILLIAM HAMLIN				
P04CRF0132	-A	-B	-C	-D

9. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

a. Restitution Fine(s):

Case A: \$ 10000.	per PC 1202.4(b) forthwith per PC 2085.5;	\$ 10000.	per PC 1202.45 suspended unless parole is revoked.
Case B: \$	per PC 1202.4(b) forthwith per PC 2085.5;	\$	per PC 1202.45 suspended unless parole is revoked.
Case C: \$	per PC 1202.4(b) forthwith per PC 2085.5;	\$	per PC 1202.45 suspended unless parole is revoked.
Case D: \$	per PC 1202.4(b) forthwith per PC 2085.5;	\$	per PC 1202.45 suspended unless parole is revoked.

b. Restitution per PC 1202.4(f):

Case A: \$ 16,193.84	<input type="checkbox"/> Amount to be determined to <input checked="" type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund
Case B: \$	<input type="checkbox"/> Amount to be determined to <input type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund
Case C: \$	<input type="checkbox"/> Amount to be determined to <input type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund
Case D: \$	<input type="checkbox"/> Amount to be determined to <input type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund

(*List victim name(s) if known and amount breakdown in item 11, below.)

c. Fine(s):

Case A: \$	per PC 1202.5. \$	per VC 23550 or	days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS
Case B: \$	per PC 1202.5. \$	per VC 23550 or	days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS
Case C: \$	per PC 1202.5. \$	per VC 23550 or	days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS
Case D: \$	per PC 1202.5. \$	per VC 23550 or	days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS

d. Lab Fee and Drug Program Fee:

Case A: Lab Fee: \$	per HS 11372.5(a) for counts _____	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).
Case B: Lab Fee: \$	per HS 11372.5(a) for counts _____	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).
Case C: Lab Fee: \$	per HS 11372.5(a) for counts _____	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).
Case D: Lab Fee: \$	per HS 11372.5(a) for counts _____	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).

10. TESTING

a. ☐ AIDS pursuant to PC 1202.1 b. ☒ DNA pursuant to PC 296 c. ☐ other (specify):

11. Other orders (specify):

As to #9b: Victim restitution in the following amounts to these named victims: \$8428.54 to Susan Hamlin, \$2880.00 to Ryan Hamlin, \$4550.00 to Alec Hamlin, \$2260.00 to Clare Hamlin and \$955.00 to Jennifer Hamlin, plus ongoing restitution for all victims as named above.

As to misdemeanor counts 2, 3 and 4; Defendant sentenced to 180 days jail for each count, to run consecutive to the state prison sentence.

12. EXECUTION OF SENTENCE IMPOSED

- a. ☒ at initial sentencing hearing.
b. ☐ at resentencing per decision on appeal.
c. ☐ after revocation of probation.
d. ☐ at resentencing per recall of commitment. (PC 1170(d).)
e. ☐ other (specify):

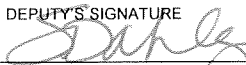
13. CREDIT FOR TIME SERVED

CASE	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT
A	1086	945	<input type="checkbox"/> 4019 <input checked="" type="checkbox"/> 2933.1
B			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
C			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
D			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
Date Sentence Pronounced:		Time Served in State Institution:	
09-29-06		DMH	CDC CRC
		[]	[] []

14. The defendant is remanded to the custody of the sheriff ☒ forthwith ☐ after 48 hours excluding Saturdays, Sundays, and holidays.
To be delivered to ☒ the reception center designated by the director of the California Department of Corrections.
☒ other (specify): After restitution hearing on 10-30-06.

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE 	DATE 10-04-06
--	------------------

ABSTRACT OF JUDGMENT – PRISON COMMITMENT

ATTACHMENT PAGE

CR-290-A

PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: RICHARD WILLIAM HAMLIN			
P04CRF0132	-A	-B	-C
		-D	

1. Defendant was convicted of the commission of the following felonies:
This attachment page number: 1

CNT.	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY			TERM (L, M, U)	CONCURRENT	CONSECUTIVE 1/3 VIOLENT	CONSECUTIVE 1/3 NON-VIOLENT	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE (refer to item 5)	654 STAY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED	
						JURY	COURT	PLEA								YRS.	MOS.
6	PC	422	CRIMINAL THREAT	2004	01-10-06	X			U						X	3	0
9	PC	273.5(A)	CORPORAL INJURY TO SPOUSE	2003	01-10-06	X			U						X	4	0
13	PC	273.5(A)	CORPORAL INJURY TO SPOUSE	2004	01-10-06	X			U						X	4	0
17	PC	273.5(A)	CORPORAL INJURY TO SPOUSE	2004	01-10-06	X			U						X	4	0
					- -												
					- -												
					- -												
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					- -												
					- -												
					- -												
					- -												
					- -												
					- -												
TOTAL																	

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
TOTAL									

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

4. TOTAL TIME IMPOSED ON THIS ATTACHMENT PAGE: 15 years, 0 months, stayed per 654 PC 0 0

RICHARD HAMLIN
300 Forni Road
Placerville, CA 95667
(530) 621-6000

EL DORADO CO. SUPERIOR CT.

FILED OCT 19 2006

BY

Lynn Owen
Deputy

In Propria Persona

SUPERIOR COURT OF CALIFORNIA

COUNTY OF EL DORADO

PEOPLE OF THE STATE OF CALIFORNIA, CASE NO.: P04CRF0132

Plaintiff and Respondent,

v.

RICHARD HAMLIN,

Defendant and Appellant.

REQUEST FOR APPOINTMENT OF ATTORNEY

I, RICHARD HAMLIN, appellant in the above-entitled cause now pending in the Court of Appeal, Third Appellate District, do request the Court of Appeal to appoint an attorney to represent me in this matter.

In support of such request, I do hereby declare under penalty of perjury that I am presently in the custody of the Department of Corrections and I have no income or assets except as follows: None

Executed this 29th day of September, 2006, at Placerville, California.

Richard Hamlin

RICHARD HAMLIN
Appellant

CMS

RICHARD HAMLIN
300 Forni Road
Placerville, CA 95667
(530) 621-6000

EL DORADO CO. SUPERIOR CT.

FILED OCT 19 2006

BY

[Signature]
Deputy

In Propria Persona

SUPERIOR COURT OF CALIFORNIA

COUNTY OF EL DORADO

PEOPLE OF THE STATE OF CALIFORNIA,

CASE NO.: P04CRF0132

Plaintiff,

NOTICE OF APPEAL

vs.

RICHARD HAMLIN,

Defendant.

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant above-named, RICHARD HAMLIN, hereby appeals from the judgment and sentence of the above-entitled Court, entered September 29, 2006, following his Jury Trial, in the above-named action, to the Court Of Appeal, Third Appellate District.

Executed on September 29, 2006, at Placerville, California.

[Signature]

RICHARD HAMLIN
Defendant/Appellant

10/23/06 copy to Judge Keller - L

CMS

Compose Message



Charset for composing iso-8859-1

From: "Sara Dahlgren" <sdahlgren@mail.eldoradocourt.org>

Priority: Normal

To: "Probation" <gromanko@co.el-dorado.ca.us;rankeney@co.el-dorado.ca.us>

CC: bkinser@co.el-dorado.ca.us

BCC:

Reply-To:

Confirm Reading ☐

Attachment:

Browse...

Add

Subject: Restitution Hearing for Richard Hamlin

Backup sent message



Send

Save Draft

english

Spell Check

Cancel

October 19, 2006

Defendant Richard William Hamlin appeared in court on 09-29-06 and was sentenced after guilty verdicts by a Jury. The Defendant demanded a restitution hearing and the hearing is set for October 30, 2006 at 3:30 p. m. in Dept. 2.

Probation Officer Ben Kinser was present for sentencing, so this e-mail is to document the request for a restitution hearing.

Thank you, Sara

--

Open WebMail Project (<http://openwebmail.org>)

Open WebMail version 1.81 Help?

The Superior Court

CHAMBERS OF
EDDIE T. KELLER
JUDGE

STATE OF CALIFORNIA
COUNTY OF EL DORADO
495 MAIN STREET
PLACERVILLE, CALIFORNIA 95667
(530) 621-6459

October 11, 2006

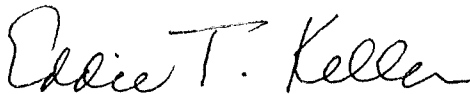
California Department of Corrections
P.O. Box 942883
Sacramento, CA 94283-001

RE: PEOPLE vs. HAMLIN, P04CRF0132

TO WHOM IT MAY CONCERN:

Mr. Hamlin has expressed a concern for his safety in state prison owing to the fact that he is a former prosecutor from Sacramento County. Among other cases, he successfully prosecuted a member of the Aryan Brotherhood, Paul "Cornfed" Schneider. Please take all necessary steps to protect his safety while in your custody.

Sincerely,

A handwritten signature in black ink that reads "Eddie T. Keller". The signature is written in a cursive, flowing style.

EDDIE T. KELLER
Judge of the Superior Court

ETK:hw

SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO
495 Main Street
Placerville, CA 95667

People of the State of California
VS.
RICHARD WILLIAM HAMLIN

Case No: P04CRF0132

MINUTE ORDER

=====
Motion RE: VARIOUS

Date: 09/29/06 Time: 1:30 pm Dept/Div: 2

=====
Charges: 1) 206 PC-F C, 2) 273A(B) PC-M C, 3) 273A(B) PC-M C, 4) 273A(B)
5) 245(A)(1) PC-F A, 6) 422 PC-F C, 7) 273.5(A) PC-F Q
--- MORE CHARGES for this Case/defendant ---

Honorable Judge EDDIE T. KELLER presiding
Clerk: Dahlgren S.
Court Reporter DeLacy K.
Bailiff W. THORNTON

Deputy District Attorney V. ASHWORTH present.
Defendant is present IN CUSTODY.
Defendant proceeds in Propria Persona.
Co-Counsel Robert Banning of the Public
Defender's Office is present.

At 13:25 p.m. court reconvenes on the record with
all parties present as noted above.
The Defendant is present in street clothing.

The Court clears the courtroom except for
the Court - staff - counsel and the Defendant.
A confidential motion is heard as put forth on
the record and that portion of the Court
Reporter's transcript is ordered sealed.

Oral motion on behalf of Defense regarding issue a bench warrant
for Deputy
Ken Danielson for not showing up for a subpena.
Motion is DENIED.

At 13:35 p.m. the public is allowed back into the
courtroom.
The Court has read all motions - oppositions etc.
filed in this matter.
Counsel argue as put forth on the record.
As to the Motion For New Trial;
Motion is DENIED.

As to the motion re: cruel and unusual punishment:
Motion is DENIED.

Court recesses at 1610; reconvenes at 1615.
All present as before.

10/04/06

Page: 2

Case Number : P04CRF0132

People vs. RICHARD HAMLIN
=====

As to the motion to set aside and dismiss
Count One (1);
Motion is DENIED.

The Court will now proceed to judgment
and sentencing - SEE JUDGMENT AND SENTENCE
MINUTE ORDER.

CUSTODY STATUS
Remains remanded to the custody of the Sheriff.
Bail to remain as previously set.
=====MINUTE ORDER END=====

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO
495 Main Street
Placerville, CA 95667

People of the State of California
VS.
RICHARD WILLIAM HAMLIN

Case No: P04CRF0132

MINUTE ORDER

=====

JUDGMENT AND SENTENCING

Date: 09/29/06 Time: 1:30 pm Dept/Div: 2

=====

Charges: 1) 206 PC-F C, 2) 273A(B) PC-M C, 3) 273A(B) PC-M C, 4) 273A(B)
5) 245(A) (1) PC-F D, 6) 422 PC-F C, 7) 273.5(A) PC-F Q
--- MORE CHARGES for this Case/defendant ---

Honorable Judge EDDIE T. KELLER presiding
Clerk: Dahlgren S.
Court Reporter DeLacy K.
Bailiff W. THORNTON

Deputy District Attorney V. ASHWORTH present.
Defendant is present IN CUSTODY.
Defendant proceeds in Propria Persona.
Co-Counsel Robert Banning of the Public
Defender's Office is present.

Probation Officer Ben Kinser present.

At 16:30 p.m. court proceeds with judgment and
sentencing.
See also the Various Motions minute order for
rulings to all the motions.

The Court has read and considered the Probation Officer's Report
and recommendation filed herein.
Argument by Counsel for judgment and
sentencing.
Victim statements by Susan Hamlin - Ryan Hamlin
Alec Hamlin - Clare Hamlin and Jennifer Hamlin
as put forth on the record.

Further argument by Counsel.
Defendant waives arraignment for pronouncement of judgment.
No legal cause why judgment should not now be pronounced.

SENTENCE

Probation is denied and sentence is imposed as follows:
As to Count(s) 1, sentenced to Life With the possibility of
parole.
Principal Count is deemed to be Count # 1.

As to Count 6, the Court imposes the UPPER term of 3 year(s) and
0 months.
Counts 6 stayed pursuant to 654 PC.

Case Number : P04CRF0132 People vs. RICHARD HAMLIN
=====

As to Count 9, the Court imposes the UPPER term of 4 year(s) and 0 months.

Counts 9 stayed pursuant to 654 PC.

As to Count 13, the Court imposes the UPPER term of 4 year(s) and 0 months.

Counts 13 stayed pursuant to 654 PC.

As to Count 17, the Court imposes the UPPER term of 4 year(s) and 0 months.

Counts 17 stayed pursuant to 654 PC.

Misdemeanors:

For the Count(s): 2

Serve 180 days in the County Jail.

For the Count(s): 3

Serve 180 days in the County Jail.

For the Count(s): 4

Serve 180 days in the County Jail.

The county jail sentences of 180 days each for Counts Two (2) - Three (3) and Four (IV) are to be served consecutively to each other and consecutively to the indeterminate sentence imposed for Count One (1).

The Defendant is committed to the California Department Of Corrections for a total indeterminate term of LIFE WITH THE POSSIBILITY OF PAROLE plus the determinate term of fifteen (15) years and zero (0) months which is stayed per 654 PC and one (1) year and six (6) months county jail for Counts 2 - 3 and 4.
~~one (1) year and six (6) months.~~

Credit for Time Served of 945 actual days, plus 141 4019 PC days, total credit 1086 days.

Defendant is entitled to no more than 15% conduct credits pursuant to Penal Code Section 2933.1.

THE COURT FURTHER ORDERS, DEFENDANT SHALL:

Defendant is ordered to pay a restitution fine in the amount of \$10000.00 pursuant to 1202.4 PC.

Court further orders a restitution fine in the amount of \$10000.00 pursuant to 1202.45 PC. Fine is suspended pending successful completion of parole.

Pay the cost of the probation report in the amount of \$460.00.

Pay restitution pursuant to Penal Code

Section 1202.4(f) in the amounts as follows:

For victim Susan Hamlin; \$8428.54.

For victim Ryan Hamlin; \$2880.00.

For victim Alex Hamlin; \$4550.00.

For victim Clare Hamlin; \$2260.00.

For victim Jennifer Hamlin; \$955.00.

Case Number : P04CRF0132

People vs. RICHARD HAMLIN

Total victim restitution to date is \$16193.84.
Defendant is ordered to pay ongoing restitution.

The Court finds that the Defendant has the
ability to pay fines - fees and restitution
while in prison and can begin to earn money
to make the payments.

Defendant required to submit to DNA archiving pursuant 296(a)(1)
PC.

Defendant advised of parole rights.
Defendant advised he must serve parole for life.

Oral motion on behalf of the People regarding lifetime
restraining order for victims
Victims are Susan - Ryan - Alec - Clare
and Jennifer Hamlin.
Motion is GRANTED.

The Defendant is restrained from contacting
any of the above-named victims unless they
want to contact him.
The Court and Counsel will check further into
this issue.

Defendant advised of Appeal Rights.

Oral motion on behalf of Defense regarding award the Defendant
33% conduct
credits pursuant to Penal Code Sec. 4019 for
Counts 2 - 3 and 4.
COURT ORDERS:
Points and Authorities from Counsel due by
10-20-06 regarding 33% time credits.

On motion of the District Attorney, Count(s) 5 14 15 is/are
dismissed.

The Defendant requests a restitution hearing.
Hearing RE: RESTITUTION set for 10/30/2006 at 15:30 in
Department 2.

The Defendant may stay in the local jail
until after the hearing on 10-30-06.
At 17:30 p.m. court adjourns.

CUSTODY STATUS
Remains remanded to the custody of the Sheriff.
Bail to remain as previously set.

CC: DIST ATTY / PUB DEF
RICHARD HAMLIN C/O JAIL
=====

=====MINUTE ORDER END=====

MEDIA AGENCY (name): The Sacramento Bee CHANNEL/FREQUENCY NO.: PERSON SUBMITTING REQUEST (name): Ramon Coronado ADDRESS: 2100 Q Street Sacramento, CA 95816 TELEPHONE NO.: 321-1020		FOR COURT USE ONLY EL DORADO CO. SUPERIOR CT. FILED <u>9-15-06</u> BY <u>Dally Warner</u> Deputy CASE NUMBER: P04CRF0132	
Insert name of court and name of judicial district and branch court, if any: El Dorado Superior Court			
TITLE OF CASE: People vs. Richard W. Hamlin			
NAME OF JUDGE: Hon. Eddie T. Keller			
MEDIA REQUEST TO PHOTOGRAPH, RECORD, OR BROADCAST			

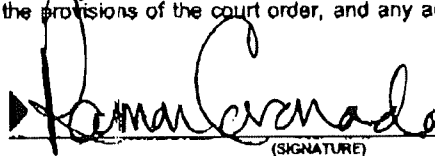
1. PORTION OF THE PROCEEDINGS TO BE COVERED (e.g., particular witnesses at trial, the sentencing hearing, etc.):
 The sentencing hearing. We would also like to photograph the sword and the derringier, which were exhibits in the trial.
2. DATE OF PROPOSED COVERAGE (specify): ~~September 1, 2006~~ **September 29, 2006** (File this form at least five court days before the proposed coverage date. If not feasible, explain good cause for noncompliance):
3. TYPE OF COVERAGE:
- a. ☐ TV camera and recorder
- b. ☒ Still camera
- c. ☐ Motion picture camera
- d. ☐ Audio
- e. ☒ Other (specify): **audio tape recorder**
4. ☐ SPECIAL REQUESTS OR ANTICIPATED PROBLEMS (specify):
 If the sentencing is postponed to another day, may this request apply to that other day?
5. ☐ INCREASED COSTS. This agency acknowledges that it will be responsible for increased court-incurred costs, if any, resulting from this media coverage (estimate): \$
☐ Amount unknown
6. PROPOSED ORDER. A completed, proposed order on Judicial Council form MC-510 is attached (required by Cal. Rules of Court, rule 980(a)(1)).

CERTIFICATION

I certify that if the court permits media coverage in this case, all participating personnel in this media agency will be informed of and will abide by the provisions of California Rules of Court, rule 980, the provisions of the court order, and any additional restrictions imposed by the court.

Date: **Aug. 10, 2006**

..... **Ramon Coronado**
 (TYPE OR PRINT NAME)


 (SIGNATURE)

Telephone No.: **321-1013**

FAX # 321-1109

 (SUPERVISORY POSITION IN MEDIA AGENCY)

NOTICE OF HEARING (A hearing is optional.)

A HEARING will be held as follows:

Date:	Time:	Dept./Div.:	Room:
Address of the court:			

Clerk, by _____, Deputy

MEDIA AGENCY (name): The Sacramento Bee CHANNEL/FREQUENCY NO.: PERSON SUBMITTING REQUEST (name): Ramon Coronado ADDRESS: 2100 Q Street Sacramento, CA 95852 TELEPHONE NO.: 321-1020		FOR COURT USE ONLY EL DORADO CO. SUPERIOR CT. FILED <u>9-15-06</u> BY <u>Jally Wanner</u> Deputy
Insert name of court and name of judicial district and branch court, if any: El Dorado Superior Court		
TITLE OF CASE: People vs. Richard W. Hamlin		
NAME OF JUDGE: Hon. Eddie T. Keller		
ORDER ON MEDIA REQUEST TO PERMIT COVERAGE		CASE NUMBER: P04CRF0132

AGENCY MAKING REQUEST (name): The Sacramento Bee

1. a. ☐ No hearing was held. 9-29-06
 b. ☒ Date of hearing: ~~9-1-06~~ Time: 1:30 Dept./Div.: 2 Room:
 2. The court considered all the relevant factors listed in subdivision (e)(3) of California Rules of Court, rule 980 (see reverse).
 3. ☐ THE COURT FINDS (findings or a statement of decision are optional): ☐ Attached ☐ As follows:

THE COURT ORDERS

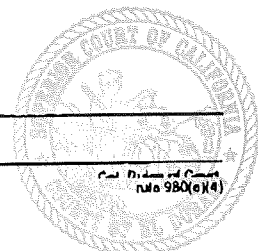
4. The request to photograph, record, or broadcast is
 a. ☐ denied.
 b. ☒ granted subject to the conditions in rule 980, California Rules of Court, AND the following:
- (1) ☐ The local rules of this court regulating media activity outside the courtroom (copy attached).
 - (2) ☐ The order of the presiding or supervising judge regulating media activity outside the courtroom (copy attached).
 - (3) ☐ Payment to the clerk of increased court-incurred costs of (specify): \$ ☐ to be determined.
 - (4) ☐ The media agency shall demonstrate to the court that the proposed personnel and equipment comply with California Rules of Court, rule 980, and any local rule or order.
 - (5) ☐ Personnel and equipment shall be placed ☐ as directed ☐ as indicated in the attachment ☐ as follows (specify):
 - (6) (i) ☐ The attached statement of agreed pooling arrangements is approved.
 (ii) ☐ A statement of agreed pooling arrangements satisfactory to the court shall be filed before coverage begins.
 - (7) ☐ This order
 (i) ☐ shall not apply to allow coverage of proceedings that are continued.
 (ii) ☐ shall apply to allow coverage of proceedings that are continued.
 - (8) ☒ Other (specify): *The camera and recorder must not make noise in the courtroom nor may they be positioned to block the view of court or counsel*
5. Coverage granted in item 4b is permitted in the following proceedings:
 a. ☐ All proceedings except those prohibited by California Rules of Court, rule 980, and those proceedings prohibited by further court order.
 b. ☐ Only the following proceedings (specify type or date or both):
6. ☐ The order made on (date): is ☐ terminated ☐ modified as follows (specify):

 7. ☐ Number of pages attached:

Date: 9/15/06

(See reverse for additional information)

JUDGE



CASE NAME:

People vs. Richard W. Hamlin

CASE NUMBER:

P04CRF0132

FACTORS CONSIDERED BY THE JUDGE IN MAKING THIS ORDER (Rule 980(e)(3))

1. Importance of maintaining public trust and confidence in the judicial system
2. Importance of promoting public access to the judicial system
3. Parties' support of or opposition to the request
4. Nature of the case
5. Privacy rights of all participants in the proceeding, including witnesses, jurors, and victims
6. Effect on any minor who is a party, prospective witness, victim, or other participant in the proceeding
7. Effect on the parties' ability to select a fair and unbiased jury
8. Effect on any ongoing law enforcement activity in the case
9. Effect on any unresolved identification issues
10. Effect on any subsequent proceedings in the case
11. Effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witness
12. Effect on excluded witnesses who would have access to the televised testimony of prior witnesses
13. Scope of the coverage and whether partial coverage might unfairly influence or distract the jury
14. Difficulty of jury selection if a mistrial is declared
15. Security and dignity of the court
16. Undue administrative or financial burden to the court or participants
17. Interference with neighboring courtrooms
18. Maintaining orderly conduct of the proceeding
19. Any other factor the judge deems relevant

PROHIBITED COVERAGE (Rule 980(e)(5))

This order does *not* permit photographing, recording, or broadcasting of the following in the court:

1. The jury or the spectators
2. Jury selection
3. A conference between an attorney and a client, witness, or aide
4. A conference between attorneys
5. A conference between counsel and the judge at the bench ("sidebars")
6. A proceeding closed to the public
7. A proceeding held in chambers

MEDIA PERSONNEL AND EQUIPMENT (Rule 980(e)(7))

NOTE: These requirements apply unless the judge orders otherwise. Refer to the order for additional requirements.

1. No more than one television camera
2. No more than one still photographer
3. No more than one microphone operator and no obtrusive microphones or wiring
4. No operator entry or exit or other distraction when the court is in session
5. No moving equipment when the court is in session
6. No distracting sounds or lights
7. No visible signal light or device that shows when equipment is operating
8. No disruption of proceedings, nor public expense, to install, operate, or remove modifications to existing sound and lighting systems
9. No media agency insignia or marking on equipment or clothing

SANCTIONS FOR VIOLATING THIS ORDER (Rule 980(f))

Any violation of this order or rule 980 is an unlawful interference with the proceedings of the court. The violation may result in an order terminating media coverage, a citation for contempt of court, or an order imposing monetary or other sanctions.

MEDIA AGENCY (name): KCRA-TV CHANNEL/FREQUENCY NO.: 3 PERSON SUBMITTING REQUEST (name): FRANK WOLFF ADDRESS: 95814 3 TV CIRCLE, SACRAMENTO TELEPHONE NO.: 916-444-7316		FOR COURT USE ONLY EL DORADO CO. SUPERIOR CT. 9-15-06 FILED BY <u>Stally Wanner</u> Deputy CASE NUMBER P04CRF0132
TITLE OF CASE: PEOPLE V. RICHARD HAMLIN NAME OF JUDGE: KELLER		MEDIA REQUEST TO PHOTOGRAPH, RECORD, OR BROADCAST

1. PORTION OF THE PROCEEDINGS TO BE COVERED (e.g., particular witnesses at trial, the sentencing hearing, etc.):

SENTENCING

2. DATE OF PROPOSED COVERAGE (specify): 9-1-06 9-29-06 (File this form at least five court days before the proposed coverage date. If not feasible, explain good cause for noncompliance)

3. TYPE OF COVERAGE:

- a. ☒ TV camera and recorder
 b. ☐ Still camera
 c. ☐ Motion picture camera

- d. ☐ Audio
 e. ☐ Other (specify):

4. ☐ SPECIAL REQUESTS OR ANTICIPATED PROBLEMS (specify):

5. ☐ INCREASED COSTS. This agency acknowledges that it will be responsible for increased court-incurred costs, if any, resulting from this media coverage (estimate): \$
☐ Amount unknown

6. PROPOSED ORDER. A completed, proposed order on Judicial Council form MC-510 is attached (required by Cal. Rules of Court, rule 980(e)(1)).

CERTIFICATION

I certify that if the court permits media coverage in this case, all participating personnel in this media agency will be informed of and will abide by the provisions of California Rules of Court, rule 980, the provisions of the court order, and any additional restrictions imposed by the court.

Date:

FRANK WOLFF
 (TYPE OR PRINT NAME)


 (SIGNATURE)

ASSIGNMENT EDITOR

(SUPERVISORY POSITION)

Telephone No.: 916-444-7316

NOTICE OF HEARING (A hearing is optional)

A HEARING will be held as follows:

Date:	Time:	Dept./Div.:
Room:		
Address of the court:		

Clerk, by:

Deputy

MEDIA AGENCY (name): KCRA-TV CHANNEL/FREQUENCY NO.: 3 PERSON SUBMITTING REQUEST (name): FRANK WOLFF ADDRESS: 3 TV CIRCLE, SACRAMENTO TELEPHONE NO.: 916-444-7316		FOR COURT USE ONLY EL DORADO CO. SUPERIOR CT. 9-15-06 FILED BY <i>Stacy Warren</i> Deputy CASE NUMBER PD4CRF0132
TITLE OF CASE: <i>PEOPLE V. RICHARD HAMLIN</i>		
NAME OF JUDGE: <i>KELLER</i>		
ORDER ON MEDIA REQUEST TO PERMIT COVERAGE		

1. a. ☐ No hearing was held.
 b. ☒ Date of hearing: *9-29-06* Time: *1:30pm* Dept./Div.: *2* Room: _____
 2. The court considered all the relevant factors listed in subdivision (e)(3) of California Rules of Court, rule 980 (see reverse).
 3. ☐ THE COURT FINDS (findings or a statement of decision are optional): ☐ Attached ☐ As follows:

THE COURT ORDERS

4. The request to photograph, record, or broadcast is

- a. ☐ denied.
 b. ☒ granted subject to the conditions in rule 980, California Rules of Court, AND the following:
- (1) ☐ The local rules of this court regulating media activity outside the courtroom (copy attached).
 - (2) ☐ The order of the presiding or supervising judge regulating media activity outside the courtroom (copy attached).
 - (3) ☐ Payment to the clerk of increased court-incurred costs of (specify): \$ ☐ to be determined.
 - (4) ☐ The media agency shall demonstrate to the court that the proposed personnel and equipment comply with California Rules of Court, rule 980, and any local rule or order.
 - (5) ☐ Personnel and equipment shall be placed ☐ as directed ☐ as indicated in the attachment ☐ as follows (specify):

- (6) (i) ☐ The attached statement of agreed pooling arrangements is approved.
 (ii) ☐ A statement of agreed pooling arrangements satisfactory to the court shall be filed before coverage begins.

- (7) ☐ This order
 (i) ☐ shall not apply to allow coverage of proceedings that are continued.
 (ii) ☐ shall apply to allow coverage of proceedings that are continued.

- (8) ☒ Other (specify): *the camera and recorder may not make noise in the courtroom; nor may they be positioned so as to block the view of court or counsel.*

5. Coverage granted in item 4b is permitted in the following proceedings:

- a. ☐ All proceedings except those prohibited by California Rules of Court, rule 980, and those proceedings prohibited by further court order.
 b. ☐ Only the following proceedings (specify type or date or both):

6. ☐ The order made on (date): _____ is ☐ terminated ☐ modified as follows (specify):

7. ☐ Number of pages attached:

Date: *9/15/06*

Eddie Keller
 JUDGE

(See reverse for additional information)

ORDER ON MEDIA REQUEST TO PERMIT COVERAGE

1 GARY L. LACY
2 District Attorney
3 El Dorado County
4 515 Main Street
5 Placerville, California 95667
6 Telephone: (530)621-6472

EL DORADO CO. SUPERIOR CT.
FILED Sept. 11, 2006
BY S. Dahlgren
Deputy

7 Attorneys for Plaintiff

8 IN THE EL DORADO COUNTY SUPERIOR COURT
9 STATE OF CALIFORNIA

10 THE PEOPLE OF THE STATE
11 OF CALIFORNIA, Plaintiff,

12 v.

13 RICHARD HAMLIN,
14 Defendant

P04CRF132
CASE NO. ~~P05CRF0161~~
PEOPLE'S SUPPLEMENTAL
RESPONSE TO DEFENSE
MOTION FOR A NEW TRIAL

Hearing: September 29, 2006
Time: 1:30 p.m.
Department: 2

15
16 To RICHARD HAMLIN and his co-counsel of record, ROBERT BANNING please take notice
17 that the People oppose the Motion for a New Trial. The response is based on the following
18 supplemental points and authorities, all pleadings, attachments, records, transcripts and files
19 pertaining to the jury trial and relevant motions, and on such oral and documentary evidence as
20 may be presented at the time of the hearing.

21 Attached this response is a supplemental declaration by Juror Heissner and Judicial
22 Assistant Sara Dahlgren as further evidence in support of the People's position.

23 **NO EVIDENCE OF JUROR MISCONDUCT EXISTS**

24 The defense has argued, in the latest supplemental motion, that Juror Heissner committed
25 misconduct by asking if it would be okay to bring a dictionary into deliberations. When he was
26 told he could not use a dictionary, it was put away and not used. These are the undisputed facts

1 and there is nothing here that constitutes misconduct.

2 In *People v. Barton* (1995) 37 Cal.App.4th 709, the jury consulted two dictionaries and
3 actually had "post-it" notes on certain legal terms in the dictionary. When discovered, the jurors
4 were told to follow only the definitions of words as contained in the jury instructions. The jury
5 later returned guilty verdicts against the defendant. The appellate court upheld the convictions,
6 concluding that although there was misconduct because the jury *consulted* the dictionaries, the
7 presumption of prejudice had been rebutted by the Court's instruction to the jury to follow only
8 his instructions. Additionally, the jurors were individually polled after the verdicts and they all
9 indicated they did as they were instructed.

10 In the present case, the dictionary in questions was *never* consulted. *If* the dictionary was
11 consulted or utilized in some way, then misconduct would exist and a presumption of prejudice
12 would be raised that the People would then have to rebut. However, those are not our facts here.
13 There is no misconduct because the dictionary was never consulted. There have been many
14 declarations submitted by the defense on this issue and not one of the jurors indicate that Juror
15 Heissner ever brought a dictionary into deliberations or even consulted a dictionary during
16 deliberations. Under this analysis, the defense has failed to show any evidence that misconduct
17 occurred in regards to the dictionary and for those reasons, their motion must fail on those
18 grounds.

19 The defense also submitted additional declarations indicating that Juror Heissner
20 pressured or intimidated at least one other juror into voting guilty on certain charges and that he
21 allegedly formed his opinion before the conclusion of all evidence. The People find that this
22 information is a bit "convenient" at this point in the proceedings - especially since the defense
23 indicated at the last court hearing that they have known about this information for a while now
24 and are just now disclosing it to the Court and counsel.

25 However, as indicated in Juror Heissner's supplemental declaration, nothing could be
26 further from the truth. Mr. Heissner did not intimidate anyone, but only argued his position/view
27
28

1 *as did everyone else* in deliberations. If anything, it appears that there are a few jurors who are
2 having "buyer's remorse" in finding the defendant guilty of some charges because they have now
3 found out that the defendant faces a life sentence in state prison. Although it needs to be made
4 clear that a "life" term is interpreted in the Penal Code as a minimum of 7 years to life. Further
5 support of this position is in the verdicts themselves. If a juror had been pressuring anyone into
6 voting guilty, then why the not guilty verdicts on some counts? Additionally, the verdict on
7 Count 1 was fairly early on in the deliberations, which indicates that it was a count on which the
8 jury easily reached a decision. And further, there were other counts where the jurors could not
9 agree at all which resulted in a hung jury on the remaining three counts. Looking at the totality
10 of the verdicts and proceedings, there is absolutely nothing to indicate that any juror was
11 intimidated or pressured into voting one way or the other - it is only *after* the realization the
12 penalty the defendant faces that any of this information came to light. This is the very reason
13 that, prior to verdicts, jurors are not told of any penalty a defendant faces - so they will not reach
14 verdicts based on pity or compassion for the defendant, but instead will *fairly* decide the matter
15 based on all the evidence presented during the jury trial and nothing more. That is exactly what
16 this jury did in this matter.

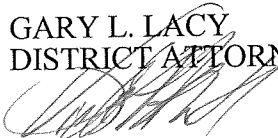
17 CONCLUSION

18 Based on the foregoing argument, the People respectfully request that this court deny the
19 defense motion for a new trial and find that there was no juror misconduct in this case.

20 Date: September 11, 2006

21 Respectfully submitted,

22 GARY L. LACY
23 DISTRICT ATTORNEY

24 
25 VICKI L. ASHWORTH
26 Deputy District Attorney
27
28

1 GARY L. LACY
District Attorney
2 El Dorado County
515 Main Street
3 Placerville, California 95667
Telephone: (530)621-6472
4

5 Attorneys for Plaintiff
6

7 IN THE EL DORADO COUNTY SUPERIOR COURT
8 STATE OF CALIFORNIA

9 THE PEOPLE OF THE STATE
10 OF CALIFORNIA,

Plaintiff,

11
12 v.

13 RICHARD HAMLIN,

14 Defendant
15

CASE NO. P05CRF0161

DECLARATION OF ROBERT
HEISSNER

16 I, ROBERT HEISSNER, declare as follows:

17 I was a juror in the above-entitled case.

18 During the first day of deliberations in this case, all the jurors went around and expressed
19 their own personal opinion about where they stood on Mr. Hamlin's guilt or innocence. There
20 were no "shrinking violets" on this jury and no one held back in expressing their opinions during
21 deliberations. I did express my own opinion, as did everyone else, but I never pressured or
22 intimidated anyone into voting guilty or not guilty. In fact, everyone argued/expressed their
23 points regarding how the evidence pointed towards guilt or innocence and we reached verdicts
24 after discussions as well as review of numerous items of evidence.

25 At no time during this case, either before or during deliberations, did I pressure or
26 intimidate anyone into finding Mr. Hamlin guilty on any charge. Indeed, on the last day of
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1 deliberations, we were unable to agree on a verdict for a few counts and remained split, resulting
2 in a hung jury on those counts.

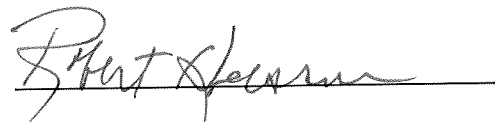
3 I listened to all of the evidence in this case before forming any opinion as to Mr. Hamlin's
4 guilt or innocence. I never expressed an opinion about his guilt or innocence prior to the start of
5 deliberations. It was not until the first day of deliberations, when we all went around and
6 expressed our opinions, that I voiced my opinion on Mr. Hamlin's guilt. My opinion was based
7 on all the evidence I heard during the jury trial.

8 Also, during deliberations, I did not call Ms. Reed names. Ms. Reed liked to lecture
9 others and I can recall telling her she was not my wife or my mother and she didn't need to
10 lecture me.

11 As stated in my earlier declaration, I did apologize to the group of jurors early on in
12 deliberations after I said we should end for the day because I was frustrated. We broke
13 deliberations for the day (late in the day) as a group, and I apologized the next morning. This
14 apology was not right before we went into the courtroom for reading of the verdicts - it happened
15 much earlier in the process of deliberations.

16
17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed on September 11, 2006 in El Dorado Hills, California.

19
20 
21 ROBERT HEISSNER

DECLARATION OF SARA DAHLGREN
Regarding dictionary

August 28, 2006

I, Sara Dahlgren, hereby declare the following:

I am the Judicial Assistant (Clerk) for Judge Eddie T. Keller. I was the Clerk for the jury trial in the case of People vs. Richard Hamlin.

I have read the declaration of Investigator Phil Dannaker wherein he says he interviewed me regarding the dictionary incident with the Jury. I wish to make a few corrections to the statement.

Although small details, words and meanings are important. Generally, the statement is true, however, the parts that say, "...a juror who tried to bring a dictionary into the courtroom" and, "...he had stopped a juror from bringing a dictionary into the courtroom" are incorrect.

I said that I have some recollection of the Bailiff telling the Judge that a juror asked if he could use a dictionary, and the Bailiff told him 'no'.

I declare the foregoing is true under penalty of perjury.

Sara Dahlgren

A handwritten signature in cursive script, reading "Sara Dahlgren", with a long horizontal flourish extending to the right.

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
County of El Dorado)

PEOPLE vs. RICHARD W HAMLIN,


DOCKET #: P05CRF0161

DA # 05-04-002437-2

I am a citizen of the United States and a resident of the County of El Dorado. I am over the age of eighteen years and not a party to the within entitled action; my business address is 515 Main Street, Placerville, CA 95667

On September 11, 2006 I served the within PEOPLE'S SUPPLEMENTAL RESPONSE TO DEFENSE MOTION FOR A NEW TRIAL on the parties in said action, by faxing a true copy thereof to Public Defender at fax number 642-9205.

I, the undersigned, declare under penalty of perjury, that the foregoing is true and correct. Executed on September 11, 2006 at Placerville, California.


NANCY TENLEY

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
County of El Dorado)

PEOPLE vs. RICHARD W HAMLIN,

DOCKET #: [DOCKET NUMBER]

DA # 05-04-002437-2

I am a citizen of the United States and a resident of the County of El Dorado. I am over the age of eighteen years and not a party to the within entitled action; my business address is 515 Main Street, Placerville, CA 95667.

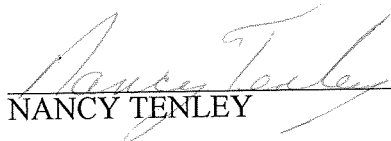
On September 11, 2006 I served the within PEOPLE'S SUPPLEMENTAL RESPONSE TO DEFENSE MOTION FOR A NEW TRIAL

on the parties in said action, by delivering through inter-office mail a true copy thereof to:

Richard Hamlin
c/o El Dorado County Jail

I, the undersigned, declare under penalty of perjury, that the foregoing is true and correct.

Executed on September 11, 2006 at Placerville, California.



NANCY TENLEY

EL DORADO CO. SUPERIOR CT.

FILED 9-7-06

BY Stacy M. Warden
Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

VS.

RICHARD HAMLIN,

Defendant.

CASE # PO4CRF0132

RULING ON MOTION
TO DISQUALIFY
PURSUANT TO CCP
§170.1(A)(6)

The undersigned, assigned by the Chairperson of the Judicial Council, has reviewed the statement of disqualification, declaration of Marilyn King and the answer of Judge Keller together with the declaration of Annie Wilson and Sara Dahlgren.

The basis of the Statement is a claim by Marilyn King. She alleges that on June 24, 2006, Judge Keller, as the judge assigned in the above entitled case stated that the defendant "is a really terrible person". The Statement is predicated on C.C.P. §170.1(A)(6). Although not specified, the court believes the motion is based upon subparagraph (iii). (A person aware of the facts might reasonably entertain a doubt that the judge might be able to be impartial.)

Although the Statement and accompanying declaration are completely vague on this point, the court assumes that the guilt of the above entitled defendant is already established and post-trial motions, possibly under *Romero*, are pending.

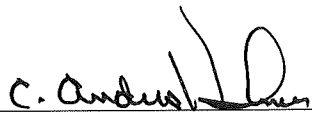
CMS

1 The party challenging a judge has the burden of establishing a ground for
2 disqualification. *Betz v Pankow* (1993) 16 Cal.App. 4th 919, 926. It is important to point
3 out that the basis of the disqualification is multi-layer hearsay. In other words, Ms. King
4 reports she heard from Ms. Wilson, that Ms. Wilson had been told by the assigned judge
5 that the defendant was "a really terrible person".

6 Not only is the alleged statement attributable to the judge controverted by the
7 declarations of Ms. Wilson and Ms. Dahlgren, but the declarations submitted by these
8 women raise substantial questions regarding the credibility of Ms. King. The declarations
9 of Ms. Dahlgren and Ms. Wilson point out that Ms. King had disgruntlements with the
10 justice system concerning her son, presumably in the same court as the assigned judge
11 who is subject to this statement of disqualification, and further, she had consumed
12 significant amounts of alcohol at the time of the alleged statement attributable to the
13 presiding judge.

14 Accordingly, the court denies the motion to disqualify.

15 DATE: 9/1/06

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JUDGE OF THE SUPERIOR COURT, ASSIGNED

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1 PUBLIC DEFENDER'S OFFICE
2 County of El Dorado
3 630 Main Street
4 Placerville, CA 95667
5 (530) 621-6440

6 Attorneys for Defendant

FILED

06 SEP -7 AM 11:03

ELDORADO COUNTY
SUPERIOR COURT

BY Red DEPUTY

8
9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF EL DORADO

11 STATE OF CALIFORNIA,

CASE NO.: P04CRF0132

12 Plaintiff,

SUPPLEMENTAL DECLARATION
OF ROBERT BANNING

13 Vs.

14 RICHARD HAMLIN,

15 Defendant.

16
17 _____/
18 I, ROBERT BANNING, declare as follows:

19 I am defense co-counsel in the above-entitled case.

20 I have reviewed the declaration of Annie Wilson.

21 In her declaration, Ms. Wilson states that there was
22 information in my original declaration that was incorrect.

23 Everything stated in my original declaration that recites
24 my conversation with Ms. Wilson is absolutely correct. I took
25 notes as we spoke and I used those notes to prepare a
26 typewritten history of the conversation. I used that
27 typewritten history when I prepared my declaration.
28

1 Ms. Wilson did say she worked with Judge Keller. She never
2 told me that she worked as a file clerk. The words "file clerk"
3 were never a part of our conversation.

4 I did not have an agenda when I spoke to Ms. Wilson. I
5 wanted to find out exactly what she remembered about
6 conversations she had with Judge Keller and Marilyn King about
7 the Hamlin case. I accurately recounted that conversation in my
8 original declaration.

10 Ms. Wilson never told me that she had lunch with Judge
11 Keller. She only told me that she last saw Judge Keller when
12 she picked up the CASA lunches. I first found out about her
13 lunch with Judge Keller from Judge Keller himself.

15 Ms. Wilson never said or asked why a judge would talk about
16 a case at lunch. That was not part of a conversation she had
17 with me.

18 I did not make any comments to Ms. Wilson about knowing
19 this was a long shot in a dark tunnel. That is not an
20 expression I have ever used. I did not use those words, I did
21 not express that idea, and I did not discuss that subject with
22 Ms. Wilson. There is no reason for me to discuss that subject
23 with Ms. Wilson. There was no reason for me to apologize for or
24 rationalize any reason for the conversation with Ms. Wilson. I
25 was seeking information and I had no reason to make excuses for
26 that.

28 Ms. Wilson is incorrect in those areas of her declaration.

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I declare under penalty of perjury that the foregoing is true and correct and executed on September 7, 2006, at Placerville, California.


ROBERT BANNING

RE: Richard Hamlin
P05CRF0161

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of El Dorado. I am over the age of eighteen years and not a party to the within entitled action; my business address is 630 Main Street, Placerville, California.

On September 7, 2006, I served the within SUPPLEMENTAL
DECLARATION OF ROBERT BANNING on the parties in said action, by
hand:

Vicki Ashworth
EL DORADO COUNTY DISTRICT ATTORNEY
495 Main Street
Placerville, CA 95667

I, TARA J. ANGEL, declare under penalty of perjury, that the foregoing is true and correct.

Executed on September 7, 2006, at Placerville, California.


TARA J. ANGEL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO
495 Main Street
Placerville, CA 95667

People of the State of California
VS.
RICHARD WILLIAM HAMLIN

Case No: P04CRF0132

MINUTE ORDER

=====
Motion RE: VARIOUS
Date: 09/01/06 Time: 1:30 pm Dept/Div: 2
=====
Charges: 1) 206 PC-F C, 2) 273A(B) PC-M C, 3) 273A(B) PC-M C, 4) 273A(B)
5) 245(A)(1) PC-F A, 6) 422 PC-F C, 7) 273.5(A) PC-F Q
--- MORE CHARGES for this Case/defendant ---

Honorable Judge EDDIE T. KELLER presiding
Clerk: Dahlgren S.
Court Reporter DeLacy K.
Bailiff K. SCHMALZ

Deputy District Attorney V. ASHWORTH present.
Defendant is present IN CUSTODY.
Defendant is represented by PRO PER & PUB. DEF. R. BANNING.

Due to the pending motion to disqualify Judge
Keller; all other matters must trail.
As to the motion to disqualify; Atty. Banning
may file a supplemental declaration to Annie
Wilson's declaration.
The Court informs him that he can file the
supplemental declaration here with this court and
it will be forwarded to the judge handling the
matter.

As to other Defense motions; the People will
reply within one week to Defense's supplemental
motion.

Hearing continued pursuant to Stipulation by parties to
09/29/2006 at 13:30 in Department 2.

CUSTODY STATUS
Remains remanded to the custody of the Sheriff.
Bail to remain as previously set.

cc: D A / PUB DEF / R. HAMLIN C/O JAIL
=====MINUTE ORDER END=====

Dispo

SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO
495 Main Street
Placerville, CA 95667

People of the State of California
VS.
RICHARD WILLIAM HAMLIN

Case No: P04CRF0132

MINUTE ORDER

=====

JUDGMENT AND SENTENCING

Date: 09/01/06 Time: 1:30 pm Dept/Div: 2

=====

Charges: 1) 206 PC-F C, 2) 273A(B) PC-M C, 3) 273A(B) PC-M C, 4) 273A(B)
5) 245(A)(1) PC-F A, 6) 422 PC-F C, 7) 273.5(A) PC-F Q
--- MORE CHARGES for this Case/defendant ---

Honorable Judge EDDIE T. KELLER presiding
Clerk: Dahlgren S.
Court Reporter DeLacy K.
Bailiff K. SCHMALZ

Deputy District Attorney V. ASHWORTH present.
Defendant is present IN CUSTODY.
Defendant is represented by PRO PER & PUB. DEF. R. BANNING.

See MOTIONS minute order for details as to
the reason for continuance.
Hearing continued pursuant to Stipulation by parties to
09/29/2006 at 13:30 in Department 2.

CUSTODY STATUS
Remains remanded to the custody of the Sheriff.
Bail to remain as previously set.

cc: D A / PUB DEF / R. HAMLIN C/O JAIL

=====MINUTE ORDER END=====

Dispo

Chambers of the Chief Justice
SUPREME COURT OF CALIFORNIA
350 McALLISTER STREET
SAN FRANCISCO, CA 94102-3660

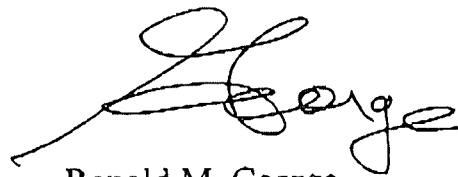
993793-06

THE HONORABLE C. ANDERS HOLMER, Judge of the Superior Court of California, County of Nevada, is hereby assigned to sit as a Judge of the Superior Court of California, County of El Dorado, on the following date(s):

August 30, 2006 To September 29, 2006

and until completion and disposition of all causes and matters heard pursuant to this assignment.

Dated: August 29, 2006



Ronald M. George
Chief Justice of California and
Chairperson of the Judicial Council

cc: Presiding Judge
Hon. C. Anders Holmer

Original On File With AOC

SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO
495 Main Street
Placerville, CA 95667

People of the State of California
VS.
RICHARD WILLIAM HAMLIN

Case No: P04CRF0132

MINUTE ORDER

=====

EX-PARTE MINUTE ORDER RE: 170.1(a)(6) DISQUALIFICATION
Date: 08/28/06 Time: 8:49 am Dept/Div: 2

=====

Charges: 1) 206 PC-F C, 2) 273A(B) PC-M C, 3) 273A(B) PC-M C, 4) 273A(B)
5) 245(A)(1) PC-F A, 6) 422 PC-F C, 7) 273.5(A) PC-F Q
--- MORE CHARGES for this Case/defendant ---

Honorable Judge EDDIE T. KELLER presiding
Clerk: H Warren
Court Reporter none

The Defendant having filed a 170.1(a)(6) against
the Honorable Eddie T. Keller - this matter was
referred to the Judicial Council for assignment.

The Honorable C. Anders Holmer - Presiding Judge -
of Nevada County Superior Court is hereby ordered
assigned by the Judicial Council to review and
issue a ruling on the disqualification.

On 09/01/06 the Judgment & Sentencing and
various motions are off calendar - however - the
rescheduling of these matters will be calendared
at this time.

CUSTODY STATUS
Remains remanded to the custody of the Sheriff.
Bail to remain as previously set.

cc: District Attorney/Public Defender/R. Hamlin
cc: Jail Transportation

=====MINUTE ORDER END=====

Hearing is ordered Off Calendar

=====MINUTE ORDER END=====

Dispo

FILED

8-28-06

BY

Shelly M. Warren

Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

STATE OF CALIFORNIA

Plaintiff

vs.

RICHARD HAMLIN

Defendant.

CASE NO: P04CRF0132

ANSWER TO MOTION TO
DISQUALIFY PER
CCP 170.1(a) (6)

I, JUDGE EDDIE T. KELLER, declare as follows:

I am a Superior Court Judge of El Dorado County assigned to this case.

Ann Wilson is a former employee of our court. She is a good friend of my judicial assistant, Sara Dahlgren.

Several months ago, they went to lunch at a local restaurant. I joined them. I have no recollection of talking to Ms. Wilson about the Hamlin case. This is the only contact I have had with her this year.

While this case has been pending, many people have asked me about its status. My standard reply is that motions and sentencing are still pending.

I do not recall ever saying that Mr. Hamlin is a "really terrible person."

I believe that I have treated Mr. Hamlin with patience, respect and fairness throughout these proceedings.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 28, 2006

Eddie T. Keller

EDDIE T. KELLER

Judge of the Superior Court

CMS

EL DORADO CO. SUPERIOR CT.

FILED 8-28-06

BY Jelly M. Warren
Deputy

DECLARATION OF SARA DAHLGREN
Regarding lunch with Annie Wilson

August 28, 2006

I, Sara Dahlgren, hereby declare the following:

I am the Judicial Assistant (Clerk) for Judge Eddie T. Keller. I recall a lunch attended possibly in April this year (2006) with a friend, Annie Wilson. I do not recall the exact date, but I do know that it was the day the CASA lunches were being delivered. Also in attendance was Judge Keller.

Annie and I set up the lunch because I only see her about once a year (or less) and she would be in town that day to deliver the CASA lunches.

I did not hear Judge Keller make any negative remarks about Richard Hamlin during this lunch, or at any other time. If any case is brought up, Judge Keller's usual response is that he cannot comment on it.

I declare the foregoing is true under penalty of perjury.

Sara Dahlgren



CMS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF EL DORADO

State of California, Plaintiff,

P04CRF0132

VS.

Richard Hamlin, Defendant.

EL DORADO CO. SUPERIOR CT.

FILED 8-28-06
BY Jally M. Wauer
Deputy

I, Annie Wilson, declare as follows:

I have had no relation to this case whatsoever and am now semi-involved due to misunderstandings of conversation and desperation of a person also not related to this case.

I have read and reviewed the declaration of Robert Banning and Marilyn King and would like to point out a few areas in which the information that stated was incorrect.

The Barbeque that is being talked about was not at her home exactly. She lives with her son for unknown reasons and the barbeque was arranged with our not knowing she would be there. I have never been around this woman before except for meeting her briefly once on Mother's day this year. I know her because her son is a friend of my fiancé.

I was with my son, fiancé and soon to be sister-in-law (Stephanie). Stephanie and I were looking at the Mountain Democrat and the Gold Panner. I was helping her look for a job in the papers. I came across something in the paper that talked about the Richard Hamlin case. Mostly to myself I said, "God that guy is crazy", Marilyn King over heard me and said how do you know he is crazy? I said to her, have you been reading this paper have you been hearing what is going on? Do you know what he did to his wife? She got all mad and a little too interested in what I said. She said how do you know it is true? I said well the paper talks about it all the time and I have been a victim of abuse myself it seems pretty obvious. She started talking about how unfair the court system is and how the district attorneys like to screw over everyone. Then she started talking about her son's case and how he isn't getting a fair chance. I am not very familiar with what is going on with that case either.

I asked her who the judge was on his case and she said Judge Keller. I told her that I thought he was a very fair person and that if I knew anyone that did something and was going to be facing a judge I would hope that they were appearing before Judge Keller because at least they would know that he would be fair and hear all sides. Marilyn then asked me how would I know. That is when she said you couldn't always trust what you

CMS

read in the paper. I said I don't think that because of the paper, I said I know him and I have worked at the courthouse and on occasion would run into him and he was always very nice to everyone. I said that I thought when I started to work there that the Judges don't talk to any one and I was intimidated, but they are just people like anyone else with important jobs to do. Mr. Banning says that I told him that I worked with Judge Keller and I did not say that, I told him that I worked as a file clerk and ran into Judge Keller on occasion.

Marilyn asked me when the last time I saw Judge Keller was and I said that on I was delivering CASA lunches (not picking them up from court as Banning says that I told him).

After all the CASA lunch deliveries were completed I met with Sara Dahlgren who happens to be Judge Keller's JA. We all had lunch along with some others I didn't know. To my recollection we never talked about the Hamlin case. I told Mr. Banning we talked about my son and how big he was getting. I showed a picture around the table. Judge Keller asked me if I was headed to law school as he asks me most times I see him. I told him that I wasn't and eventually that is still the plan, I told him about my getting married and wanting to have more children first. Everyone at the table was listening to everyone, so the conversation was for everyone not just him. I think we may have talked about his wife, I think that someone asked him how she was doing. We all talked a lot about what was good to eat there at the restaurant and about who was working on what diet.

Marilyn started talking again about her son and how it was ridiculous that things were taking so long. I think sometime during this conversation she got a phone call from him. So they were on the phone. We continued looking through the paper for Stephanie to find a job. We finished and about that time the food was done and we all started eating together. Because Willie (her son) just called from Jail everyone was talking about him and asked how he was doing. She was going on and on about how he is a different person and how well he is doing. She said he taking classes and got his GED. She said he has really turned out differently than she thought he would in there. My only comment during this discussion was that I didn't know you could take classes in jail.

We finished dinner and it was getting late we decided to call it a night but at first we all went into to the kitchen. Stephanie, Marilyn and I cleaned up the kitchen. In Marilyn's declaration she states that she became upset with me and told me that I shouldn't judge someone before the case is over. That was never said and she never became angry with me, in fact, she told me to call her if I wanted to join the house cleaning business with her.

Marilyn King took two different conversations and twisted them into one that couldn't have been more farther from the truth. Mr. Banning also asked me a lot of questions and then totally made what I said fit his agenda. I never said that Judge Keller said anything about the Hamlin case. I talked about each topic separately and somehow she missed that. Mr. Banning mentions in his declaration that I admitted to being at the

BBQ and about speaking about Mr. Hamlin. He is correct, I did say that because I did do those things. I never spoke of the two topics together as implied. I do think Mr. Hamlin sounds crazy and hopefully everyone he hurt will forgive him, but I could understand why they wouldn't.

Mr. Banning says that I didn't admit to having lunch with Judge Keller and that is also not true. I told him who was there and what we talked about, i.e., my son, his wife, the wedding, law school, etc. I said to Mr. Banning, why would a judge speak about a case at lunch when that is the only time during the day that he has to not think about the case. Mr. Banning said he agreed with me. He also said he was just trying to follow any lead having to do with this case. He said that his client was sitting in a jail cell reaching for anything he could. He said he had to do his job. He also said that "he knew this was a long shot in a very dark tunnel", but it was worth looking into.

An investigator also contacted me regarding this issue. I told him the same things I told Mr. Banning. I asked Mr. Danaker where all this was coming from and he told me that he was just assigned to this and he said he also has to do his job even though he could see this was going no where. He said that Marilyn told her son this information and he told his attorney. He said that she was making it sound like she has known me for along time. I told him that I have only met her once and then there was the BBQ. I would not normally choose to hang out with some that I don't know, but we were visiting her son, NOT her. I told him I am surprised that she even remembered my name considering the amount of beers she was drinking that night. He asked who else was there and I gave him my fiancé's phone number. I told him that at that moment I didn't have Stephanie's, but I could get it for him and call him back. He told me he didn't think this would be necessary.

About a week or more went by and then my phone rang and it was Mr. Danaker again. He announced himself and then said "if you don't want to do this you can tell me to go pound sand, but can I have Stephanie's phone number?" I told him that she was sitting right next to her and I gave her the phone. He asked her a few questions and then they hung up. I asked her what he said and she said she didn't even know what he was talking about. She said the last thing he said to her was thank you and that she wouldn't be hearing from him again.

I do not know why she would change everything around like she did. My only guess is that she is a desperate mother who is trying to help her son, but maybe it is too little too late.

I declare under penalty of perjury that the foregoing is true and correct.

Dated August 27, 2006

A handwritten signature in cursive script that reads "Annie Wilson". The signature is written in dark ink and is positioned above a horizontal line.

Annie Wilson

PUBLIC DEFENDER'S OFFICE
County of El Dorado
630 Main Street
Placerville, CA 95667
(530) 621-6440

Attorneys for Defendant

FILED

06 AUG 22 AM 8:25

ELDORADO COUNTY
SUPERIOR COURT

BY AK DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF EL DORADO

STATE OF CALIFORNIA,

CASE NO.: P04CRF0132

Plaintiff,

STATEMENT OF DISQUALIFICATION

PURSUANT TO CODE OF CIVIL

Vs.

PROCEDURE SECTION 170.1(a)(6)

RICHARD HAMLIN,

Defendant.

I, ROBERT BANNING, attorney for defendant in this action,
RICHARD HAMLIN, declare that EDDIE T. KELLER, the judge before
whom the post-trial motions and judgment and sentencing of the
action is pending is prejudiced against the defendant so that he
cannot have a fair and impartial motion hearing and sentencing
before such judge.

I.

STATEMENT OF FACTS

On June 24, 2006, Marilyn King was having a barbeque at her
house. Ann Wilson, among others, was present. Ms. King saw Ms.

CMS

1 Wilson reading a Mountain-Democrat article about Mr. Hamlin's
2 case and asked Ms. Wilson if she followed the case.

3 Ms. Wilson responded that she heard Mr. Hamlin was a really
4 terrible person. Ms. King told Ms. Wilson that the Mountain-
5 Democrat is not always right. Ms. Wilson replied that it was
6 Judge Keller who told her that Mr. Hamlin is a really terrible
7 person.
8

9 Judge Keller's comments about the defendant were made
10 before Judge Keller ruled on motions brought before the Court by
11 Mr. Hamlin. Two of those motions brought before the Court
12 argued that Mr. Hamlin is a person with a good background and
13 good character.
14

15 On August 7, 2006, defense investigator Phil Dannaker
16 interviewed Judge Keller about whether he knew Ann Wilson.
17 Judge Keller stated he had lunch with Ms. Wilson on one
18 occasion. Judge Keller said that he does not have much of a
19 recollection as to what was discussed, but did say that Mr.
20 Hamlin's case may have come up in conversation with Ms. Wilson
21 but "that if it did it would have involved the basic status of
22 the case."
23

24 On August 8, 2006, the defense requested to be put on
25 calendar. This matter was discussed in chambers. Judge Keller
26 maintained he could not remember much of the lunch conversation
27 but now remembered that the lunch was also attended by Sara
28

1 Dahlgren, his judicial assistant. Judge Keller also stated that
2 he had been informed that the defense had spoken to Ms. Wilson.

3 On July 28, 2006, Ms. Wilson spoke to Robert Banning, co-
4 counsel for the defense. Ms. Wilson admitted she was at a
5 barbeque with Ms. King and did speak about Mr. Hamlin with Ms.
6 King. Ms. Wilson stated that she said Mr. Hamlin sounded crazy
7 because of what she read and from courses she had taken about
8 domestic violence. Ms. Wilson admitted that at that point Ms.
9 King did tell her she couldn't believe what is in the newspaper.

11 Ms. Wilson claimed that Judge Keller never commented
12 to her about Richard Hamlin. She also claimed she had seen
13 Judge Keller only once in the past year when she picked up some
14 CASA lunches at the courthouse. Ms. Wilson did not admit to
15 having lunch with Judge Keller. She did say that she worked
16 with Judge Keller at the courthouse.

18 I declare under penalty of perjury that the foregoing is
19 true and correct and executed on August 18, 2006, at
20 Placerville, California.

23 
24 ROBERT BANNING

25 ///

26 ///

27 ///

1 II.

2 LEGAL ARGUMENT

3 Judge Keller's Comments Show Prejudice Against The
4 Defendant, a Predetermination Of Issues Against The
5 Defendant And Are In Violation Of the Code Of Judicial Ethics

6 California Code of Civil Procedure Section 170.1 provides
7 the grounds on which a judge can be disqualified.

8 C.C.P. Section 170.1(a)(6) calls for a judge to be
9 disqualified if he is unable to be impartial.

10 A judge may not act in any proceeding when it appears
11 probable that a fair trial cannot be had because of the
12 judge's inability to be impartial. (T.P.B. v. Superior
13 Court (1977) 66 Cal.App.3d 881)

14 A judge's bias or prejudice towards a lawyer in the
15 proceeding may also be grounds for disqualification. (Ng
16 v. Superior Court (1997) 52 Cal.App.4th 1010)

17 Bias is defined as a mental predilection or prejudice,
18 a leaning of the mind, or a predisposition to decide a
19 cause of an issue in a certain way, which does not leave
20 the mind perfectly open to conviction. (Black's Law
21 Dictionary, cited in Pacific & Southwest Annual Conference
22 of the United Methodist Church v. Superior Court (1978)
23 82 Cal.App.3d 72.

24 Disqualification occurs when a judge has prejudged the
25 merits of the case. (Pacific & Southwest Annual Conference of
26 the United Methodist Church v. Superior Court, supra; Adoption
27 of Richardson (1967) 251 Cal.App.2d 222 [judge wrote a letter
28 stating the outcome of the case before presentation of the
evidence.])

Judge Keller's statement to a member of the public that Mr.
Hamlin is a "really bad guy" displays a lack of self-discipline,

1 a failure to follow the Code of Judicial Ethics and is
2 presumptively biased. Perhaps of even greater concern is that
3 Judge Keller has already decided issues before formally
4 considering in depth motions and arguments of counsel.
5

6 One of the crucial issues in determining whether to grant
7 two of the defense motions, the Penal Code Section 1385 motion
8 to dismiss and the Cruel and Unusual Punishment motion, is
9 whether the defendant is a "good or bad guy". Under the motion
10 to dismiss pursuant to section 1385, in furtherance of justice,
11 a significant factor is Mr. Hamlin's background and character.
12 The defense has put forth significant information, including
13 letters of support, which displays Mr. Hamlin has a good
14 background, character and, more to the point, is not "a bad
15 person". Similarly in the defense's motion to dismiss the life
16 sentence required by Penal Code Section 206, this Court must
17 determine whether the punishment is disproportionate to Mr.
18 Hamlin's conduct and to Mr. Hamlin's background. Relief has
19 been granted in cases where the court has determined that due to
20 the defendant's good background and good character the
21 punishment was disproportionate.
22

23 Therefore, to have a judge who is hearing motions that
24 deal, in part, with whether the defendant is a good person, make
25 that determination before hearing those motions, denies the
26 defendant the most basic constitutional guarantee of being
27 judged by an impartial court and due process.
28

1 Further, Judge Keller's comments violate several canons of
2 the Code of Judicial Ethics:

3 CANON 3. A Judge Shall Perform The Duties Of Judicial

4 Office Impartially And Diligently

5 B. Adjudicative Responsibilities

6 (5) A judge shall perform judicial duties
7 without bias or prejudice.

8 (6) A judge shall accord to every person who has
9 a legal interest in a proceeding, or that
10 person's lawyer, full right to be heard
11 according to law.

12 A judge shall not initiate, permit or
13 consider ex parte communications or consider
14 other communications made to the judge
15 outside the presence of the parties
16 concerning a pending or impending
17 proceeding.

18 The Advisory Committee Commentary 2005 Main
19 Volume states, "The proscription against
20 communications re: a proceeding includes
21 communications from lawyers...and other
22 persons who are not participants in the
23 proceeding."

24 CANON 1: A Judge Shall Uphold The Integrity And
25 Independence Of The Judiciary
26

1 The Advisory Committee Commentary 2005 Main Volume
2 states in part, "The integrity and independence of
3 judges depend in turn upon their acting without fear
4 or favor...Public confidence in the impartiality of
5 the judiciary is maintained by the adherence of each
6 judge to this responsibility."
7

8 CANON 2: A Judge Shall Avoid Impropriety And The
9 Appearance Of Impropriety In All Of The Judge's
10 Activities
11

12 A. Promoting Public Confidence

13 A judge shall respect and comply with the law and
14 shall act at all times in a manner that promotes
15 public confidence in the integrity and impartiality
16 of the judiciary.

17 The Advisory Committee Commentary states,
18 "Public confidence in the judiciary is eroded by
19 irresponsible or improper conduct by judges. A
20 judge must avoid all impropriety and appearance of
21 impropriety. A judge must expect to be the subject
22 of constant public scrutiny.

23 "The prohibition against behaving with impropriety
24 or the appearance of impropriety applies to both
25 the professional and personal conduct of a judge.

26 "The test for the appearance of impropriety is
27 whether a person aware of the facts might
28

1 reasonably entertain a doubt that the judge would
2 be able to act with integrity, impartiality and
3 competence."

4
5 III

6 PROCEDURE

7 No judge against whom a statement of disqualification has
8 been filed pursuant to Code of Civil Procedure section
9 170.3(c)(1) may hear or pass upon any question of law or fact
10 concerning his or her disqualification or the statement of
11 objection or disqualification filed against him or her. C.C.P.
12 section 1703(c)(5); People v. Sweeney (1960) 55 C2d 27.


13
14 These questions must be heard and determined by another
15 judge. If the parties to the proceeding can agree on a judge to
16 hear the issues, that judge will hear them. If the parties fail
17 to agree on a judge, the chair of the Judicial Council, on
18 notification by the clerk within five days after the expiration
19 of the time allowed for the judge to answer, will assign a judge
20 to act. C.C.P. section 170.3(c)(5).

21
22 Upon receipt of the disqualification statement, the judge
23 may file either his consent that the action be tried before
24 another judge or an answer admitting or denying any or all of
25 the allegations contained in the affidavit and setting forth any
26 additional facts or material relevant to the disqualification
27 issue. C.C.P. section 170.3; Keating v. Superior Court (1955)
28 45 C2d 440.

1 The consent or answer must be verified and filed with the
2 clerk within 10 days of filing or service of the
3 disqualification statement, whichever is later. C.C.P. section
4 170.3(c)(3).
5

6
7 Dated: August 18, 2006
8

9 Respectfully submitted,
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12 ROBERT BANNING
13 Attorney for Defendant
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1 PUBLIC DEFENDER'S OFFICE
2 County of El Dorado
3 630 Main Street
4 Placerville, CA 95667
5 (530) 621-6440

6 Attorneys for Defendant

7
8
9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF EL DORADO

11 STATE OF CALIFORNIA, CASE NO.: P04CRF0132
12 Plaintiff, DECLARATION OF
13 Vs. MARILYN KING

14 RICHARD HAMLIN,
15 Defendant.
16

17 _____/
18 I, MARILYN KING, declare as follows:

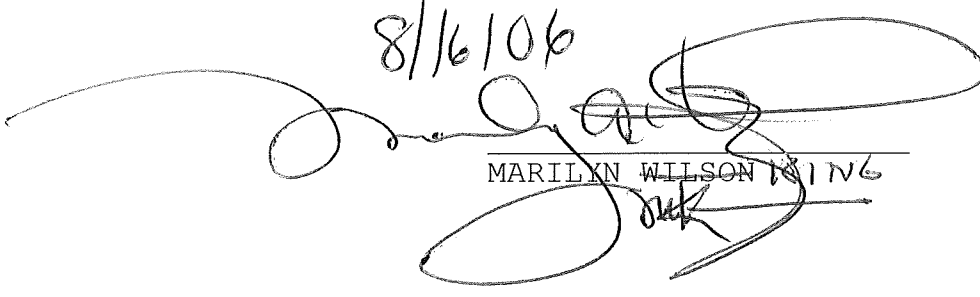
19 On June 24, 2006, I had a barbeque at my residence. Ann
20 Wilson, among others, was present for that barbeque.

21 At one point that day I saw Ms. Wilson reading a Mountain-
22 Democrat article about Mr. Hamlin's case. I asked her if she had
23 been following the case. Ms. Wilson responded to my question by
24 saying that Mr. Hamlin is a real bad person. I told her that
25 the Mountain-Democrat is not always right. Ms. Wilson then told
26 me that it was Judge Eddie Keller who told her that Rick was a
27 terrible person. At this point I became upset with Ms. Wilson
28

1 and told her that she should not judge someone before the case
2 is over. Ms. Wilson did not say anything else about Mr.
3 Hamlin's case.
4

5 I declare under penalty of perjury that the foregoing is
6 true and correct and executed on August 16, 2006, at
7 Placerville, California.
8

9 8/16/06

10
11 
12 MARILYN WILSON
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RE: Richard Hamlin
P05CRF0161

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of El Dorado. I am over the age of eighteen years and not a party to the within entitled action; my business address is 630 Main Street, Placerville, California.

On August 22, 2006, I served the within STATEMENT OF DISQUALIFICATION PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 170.1(a) (6) on the parties in said action, by hand:

Honorable Judge Eddie T. Keller
EL DORADO COUNTY SUPERIOR COURT
495 Main Street
Placerville, CA 95667

I, TARA J. ANGEL, declare under penalty of perjury, that the foregoing is true and correct.

Executed on August 22, 2006, at Placerville, California.


TARA J. ANGEL

1 PUBLIC DEFENDER'S OFFICE
2 County of El Dorado
3 630 Main Street
4 Placerville, CA 95667
5 (530) 621-6440

6 Attorneys for Defendant

FILED

05 AUG 22 AM 8:26

EL DORADO COUNTY
SUPERIOR COURT

BY AK DEPUTY

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF EL DORADO

10 STATE OF CALIFORNIA ,

CASE NO.: P04CRF1032

11 Plaintiff,

SUPPLEMENTAL NOTICE OF
MOTION AND MOTION FOR
NEW TRIAL

12 VS.

13 RICHARD HAMLIN,

Hearing Date: 9-1-06

14 Defendant.

Hearing Time: 1:30 p.m.

Department: 2

15
16 _____/
17 TO: GARY LACY, DISTRICT ATTORNEY OF EL DORADO COUNTY:

18 NOTICE IS GIVEN that on the date and time above-noted, or
19 as soon thereafter as the matter may be heard, in the above-
20 noted department of the above-entitled court, defendant RICHARD
21 HAMLIN will move pursuant to Penal Code Section 1181 for an
22 order commanding a new trial.
23

24 The motion will be made on the ground that:

- 25 1. Pursuant to Penal Code Section 1181(3), the trial court
26 has erred in the decision of a question of law arising
27 during the course of the trial.
28

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1 On April 18, 2006, the Honorable Eddie T. Keller
2 acknowledged during a court proceeding that he had been
3 informed about a juror bringing a dictionary to the jury
4 room during deliberations. When the defense asked who the
5 bailiff was, the Court responded on the record,
6

7 All right. It wasn't Kevin Schmalz. It may have
8 been Ken Danielson, because I did talk to him about
9 it. I recall some mention being brought to my
10 attention that one juror was asking if he could use a
11 dictionary. The bailiff had already told him no, and
12 I said that's the correct advice, but perhaps we
13 should have brought it to everybody's attention.
14 (Reporter's Transcript of Proceedings, April 14, 2006:
15 Page 3, lines 20-26.) (See Exhibit #2)

16 On August 7, 2006, defense investigator Phil Dannaker
17 interviewed Judge Keller, who stated that he had some
18 recollection about a juror in the Hamlin case attempting to
19 bring in a dictionary to the deliberation room. Judge Keller
20 stated bailiff Danielson advised him that a juror asked if he
21 could use a dictionary in deliberations and bailiff Danielson
22 told him that was not allowed. Judge Keller believes bailiff
23 Danielson advised him right away. (See Exhibit #3)

24 On August 7, 2006, investigator Dannaker spoke with Sara
25 Dahlgren, Judge Keller's judicial assistant. Dahlgren stated
26 she remembers overhearing a conversation between bailiff
27 Danielson and Judge Keller in which Danielson stated he stopped
28 a juror from bringing a dictionary into the courtroom. (See
Exhibit #4)

1 On August 8, 2006, in chambers, Judge Keller stated that
2 bailiff Danielson was present during the interview of August 7,
3 2006, and Danielson now remembers telling Judge Keller of the
4 incident.

5 Judge Keller never notified or advised the defense about
6 this incident. The Court received several questions from the
7 jury about receiving additional definitions regarding "great
8 bodily injury".
9

10
11 LEGAL ARGUMENT

12 Juror Heissner's attempt to bring a dictionary into the
13 jury room to help clarify definitions should have caused the
14 Court to immediately notify counsel and the defendant and begin
15 an inquiry of juror Heissner for the following reason:
16

- 17 1. At the very least to admonish the juror about violating
18 the Court's instruction and order him to not refer to
19 outside sources for clarification of the law.
- 20 2. To inquire how significant a violation occurred. The
21 legal assumption where a juror brings a dictionary to
22 the deliberations is that information was obtained which
23 the juror thought to be helpful. One would not blindly
24 bring a dictionary not knowing if it could help. Thus,
25 there was a strong possibility that juror Heissner was
26 contaminated by his reference to an outside source.
27
28 Case law, as cited in the defense motion for a new trial

1 due to juror misconduct, is clear that if a juror refers
2 to an outside source to clarify a definition of an
3 element of the charged offense, that is misconduct and
4 subjects the juror to removal and may give rise to
5 grounds for a mistrial. The Court should have been
6 exceptionally aware of the possibility that the juror
7 committed misconduct by attempting to clarify the
8 Court's definition due to the number of questions about
9 their difficulty with legal definitions and the
10 definition of "great bodily injury" in particular. The
11 jurors' difficulty with the Court's explanations and
12 answers contributed to an extraordinarily long
13 deliberation period.
14

15
16 3. Inquiry would have given the defense the opportunity to
17 make a legal objection to the juror's continued
18 participation and allowed the defense to make a motion
19 for a mistrial.

20 4. Inquiry would have maintained an accurate record of what
21 actually occurred. The defense is suffering from having
22 to establish a record after the fact. No one notified
23 the defense about this incident; it was found out
24 through our investigation efforts. The defense is now
25 faced with multiple versions of what actually happened
26 (legal or regular dictionary, dictionary taken by the
27 bailiff or retained by the juror) and in some instances,
28


1 sincere or deliberate cases of faulty memory. If the
2 Court had advised the parties and conducted an inquiry,
3 the juror would have been forced to answer all questions
4 while the event was fresh in his mind; the bailiff would
5 have much better recall of what occurred and the
6 dictionary itself could have been examined.
7

8 Case law stresses the importance of the Court's
9 intervention on juror misconduct. Timely inquiry allows the
10 Court several options: admonishment, removal of the juror, or
11 mistrial. Without inquiry, case law says that adds to the
12 circumstances in forcing the appellate court to grant a new
13 trial.
14

15 In this case, such should be the result. This Court denied
16 the defense its right to be tried by twelve impartial jurors
17 free of misconduct by failing to notify counsel and the
18 defendant of juror Heissner's attempt to bring a dictionary to
19 deliberations.

20 Dated: August 15, 2006.
21
22

23 Respectfully submitted,
24

25 
26 ROBERT BANNING
27 Assistant Public Defender
28

1 PUBLIC DEFENDER'S OFFICE
2 El Dorado County
3 630 Main Street
4 Placerville, CA 95667
5 (530) 621-6440

6 Attorneys for Defendant

7
8
9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF EL DORADO

11 STATE OF CALIFORNIA, CASE NO.: P04CRF0132

12 Plaintiff, DECLARATION OF
13 CYNTHIA HAYES

14 Vs.

15 RICHARD HAMLIN,

16 Defendant.

17 _____/
18 I, CYNTHIA HAYES, declare as follows:

19 I am a licensed investigator.

20 I spoke to deputy sheriff Ken Danielson on May 18, 2006. I
21 introduced myself and he said he knew who I was. I offered him
22 one of my business cards but he refused it. He said he didn't
23 remember anything about a dictionary as it related to the above-
24 entitled case.
25

26 I spoke to juror Robert Heissner on March 22, 2006. He
27 told me that he brought a regular or legal dictionary with him
28 to court for use in deliberations. He told me that he asked the

1 bailiff if he could bring the dictionary into the jury room and
2 was told that he could not do that. Heissner told me he
3 surrendered the dictionary to the bailiff.
4

5 On April 3, 2006, I again spoke to Robert Heissner. He told
6 me that when he was told by the bailiff that he could not bring
7 the dictionary into the jury room, Heissner put the dictionary
8 back in his jacket pocket and it stayed there.

9 I declare under penalty of perjury that the foregoing is
10 true and correct and executed on August 16, 2006, at
11 Placerville, California.
12

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14 Cynthia Hayes
15 CYNTHIA HAYES
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

DEPARTMENT NO. 2

HON. EDDIE T. KELLER, JUDGE

---o0o---

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

NO. P04CRF0132

RICHARD W. HAMLIN,

Defendant.

_____/

---o0o---

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, APRIL 14, 2006

---o0o---

APPEARANCES

FOR THE PLAINTIFF:

GARY LACY, District Attorney
El Dorado County

515 Main Street

Placerville, CA 95667

By: VICKI ASHWORTH, Deputy D.A.

FOR THE DEFENDANT:

RICK MEYER, Public Defender
El Dorado County

630 Main Street

Placerville, CA 95667

By: ROBERT BANNING, Asst. P.D.

-and-

COPY

RICHARD HAMLIN

In Propria Persona

REPORTED BY:

SARAH STROMBERG, CSR #3154

1 PLACERVILLE, CALIFORNIA

2 FRIDAY, APRIL 14, 2006, 10:00 A.M.

3 DEPARTMENT NO. 2

HON. EDDIE T. KELLER, JUDGE

4 ---o0o---

5 THE COURT: Let's go to Richard Hamlin, P04CRF0132.

6 MS. ASHWORTH: Vicki Ashworth for the People.

7 MR. BANNING: Robert Banning, Public Defender's
8 office, present.

9 THE COURT: Okay. This was put on at your request,
10 Ms. Ashworth.

11 MS. ASHWORTH: Yes, Your Honor. Unfortunately, at
12 this point, the People are going to ask to continue the
13 judgment and sentencing due to the Defense's late filing of
14 the Notice of Motion, Motion for a New Trial. It's going to
15 be impossible for us to get any coherent response in to this
16 Court by the 21st of April, which is our current due date.

17 What I would request is if the Court has availability
18 on Friday, June 2nd, for the hearing date, if the People
19 could have until May 26th to respond.

20 THE COURT: Any objection, Mr. Banning or Mr. Hamlin?

21 MR. BANNING: Your Honor, we still have one more
22 motion filed, and as the Court can see, these are lengthy
23 motions. We're not doing this for the purpose of delay.
24 We're getting them done as quickly as we can. Both of these
25 motions are 40-plus pages in length.

26 The Court understands there's a lot going into this,
27 so I want to give the Court and Counsel heads up. There's
28 one more that needs to be filed.

1 THE COURT: When do you reasonably believe you can
2 have that on file?

3 MR. HAMLIN: I think if we really push, within two
4 weeks, Judge.

5 MS. ASHWORTH: What type of motion?

6 THE COURT: Is this on the cruel and unusual
7 punishment?

8 MR. HAMLIN: Yes, sir.

9 THE COURT: So if you can have that on file by the
10 28th.

11 Do you want to keep our schedule, Ms. Ashworth, the
12 proposed schedule that you suggested, and have your reply in
13 on all motions by the 25th?

14 I noticed there was some overlap in Mr. Banning's
15 motion on insufficient receipt of evidence, and
16 Mr. Hamlin's.

17 MS. ASHWORTH: I realize that. Unfortunately, I'm
18 also in a two-defendant, special circumstance homicide trial
19 that probably won't wrap up until, at the earliest, the
20 beginning of May.

21 THE COURT: June 9th? June 16th?

22 MR. BANNING: The 16th is better than the 9th.

23 THE COURT: For the hearing?

24 MS. ASHWORTH: The 16th is worse for me,
25 unfortunately.

26 MR. BANNING: 23rd?

27 MS. ASHWORTH: I would probably say the 23rd just to
28 give sufficient time. If I could have until June 9th, then,

1 to respond to all three motions, since I don't yet have the
2 third one.

3 THE COURT: Any objection?

4 MR. HAMLIN: No objection to that.

5 I do think that we need to maybe set up what the
6 procedure is going to be. I don't know if you want to have
7 judgment and sentencing on that date. The Court may very
8 well want to hear from the jurors, the ones that have
9 already given affidavits.

10 In addition, one of the things we're going to ask is
11 to have the bailiff made available for a statement for the
12 Defense as there was another issue of misconduct of a juror
13 bringing a legal dictionary to the jury room. Apparently,
14 there was some contact. I don't know why that was not
15 reported, but we need to get a statement from that.

16 And I don't think for 1050 purposes we need to have
17 an affidavit from the bailiff, but we'd like to know
18 reasonably what to expect, and he may very well be a witness
19 as to that one aspect as well.

20 THE COURT: All right. It wasn't Kevin Schmalz. It
21 may have been Ken Danielson, because I did talk to him about
22 it. I recall some mention being brought to my attention
23 that one juror was asking if he could use a dictionary. The
24 bailiff had already told him no, and I said that's the
25 correct advice, but perhaps we should have brought it to
26 everybody's attention.

27 In any event, have your motions, the last motion on
28 file by the 28th of April. Ms. Ashworth will have until the

1 9th of June to reply. And we'll set -- reset our hearing
2 for the 23rd, depending on --

3 I agree with you, Mr. Hamlin. If I decide we need to
4 have a hearing, then that would probably occupy all that
5 day. You don't necessarily have to order a hearing,
6 depending on what all the affidavits say.

7 MR. HAMLIN: That's true.

8 THE COURT: I assume you're going to be talking to
9 the jurors as well, Ms. Ashworth.

10 MS. ASHWORTH: I'm sure I will at this point, yes.

11 MR. BANNING: Will that be 1:30 p.m.?

12 THE COURT: 1:30. We'll set a half day. Vacate our
13 current hearing set for May 5th.

14 MR. HAMLIN: Your Honor, one last thing.

15 We had previously had an order from the Court that
16 Ms. Ashworth would give us any information that she had
17 concerning juror contacts, and at this point, I would really
18 like to get those and not have the Prosecution determine
19 whether or not they think it's misconduct.

20 One of the jurors that actually has come forward to
21 speak to the Prosecution, we have not received anything from
22 them. So I'm just wondering where they're at with that.

23 THE COURT: Did you get XXX XXXXX's
24 (Juror No. 335572) letter that I sent to everybody?

25 MR. BANNING: No.

26 MR. HAMLIN: No.

27 THE COURT: There's a letter from XXX XXXXX
28 (Juror No. 335572), a letter from your father, there's a

1 letter from your aunt or uncle.

2 Please, if you have any contact with these people,
3 tell them not to send me any letters, because it has to go
4 through Probation, and your father thought he could send me
5 a personal, confidential letter.

6 MR. HAMLIN: No. One of the things that we'd request
7 is the Court not to receive that. Anything that we want
8 received is coming through us. And as a matter of fact,
9 that's not part of what we would be offering.

10 THE COURT: Well, I gave you all copies, so it can't
11 be confidential coming to me. So I don't want to be accused
12 of any ex parte receipt of information.

13 Okay.

14 MR. HAMLIN: So will the Prosecution provide us with
15 statements?

16 MS. ASHWORTH: The last time that we were in court,
17 the Court had indicated that if we had any information of
18 misconduct -- and I had spoken to Detective Strasser, and
19 the extent of our conversations with the jurors, it did not
20 involve any issues of misconduct. Detective Strasser did
21 not take any notes when the jurors contacted us after the
22 trial. It was immediately after the reading of the verdict.
23 And I did not take any notes as well.

24 But I've looked at the code section, and there was no
25 mention -- for instance, there was no mention of a
26 dictionary being brought in, there was no mention of being
27 on the Internet, there was no mention of anybody walking
28 out, things of that nature, and to my knowledge, that was

1 what the Court had ordered in this case, not that I had to
2 turn over every bit of information of -- in speaking to
3 them.

4 THE COURT: Right. That was my order.

5 MR. HAMLIN: On XXX XXXXX's (Juror No. 335572)
6 letter, can we get a copy of that?

7 THE COURT: It should be on the way. I think we put
8 it in Mr. Banning's outbox and Ms. Ashworth's, as well as
9 the other two letters.

10 Okay. We have our new schedule. Thank you.

11 MS. ASHWORTH: Thank you, Your Honor.

12 MR. HAMLIN: Thank you very much, sir.

13 (Whereupon, court proceedings were concluded.)

14 ---oOo---

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

DEPARTMENT NO. 2

HON. EDDIE T. KELLER, JUDGE

---oOo---

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

NO. P04CRF0132

RICHARD W. HAMLIN,

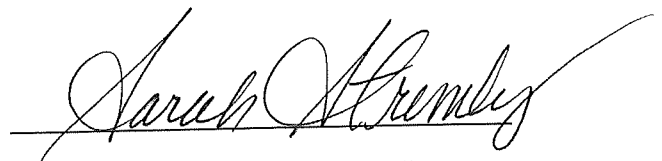
Defendant.

STATE OF CALIFORNIA)
COUNTY OF EL DORADO) ss.

I, SARAH STROMBERG, Certified Shorthand Reporter for
the State of California, do hereby certify that the
foregoing pages 1 through 6 are a true and accurate
transcript of my stenographic notes in the above-entitled
matter.

DATE OF PROCEEDINGS: April 14, 2006

Dated this 7th day of May 2006 at Placerville,
California.


SARAH STROMBERG CSR #3154

HAMLIN, RICHARD

On 08-07-06 I interviewed Judge Eddie Keller at 495 Main Street, Placerville.

Judge Keller stated that he has some recollection about a juror in the Hamlin case in regards to a juror bringing in a dictionary to the courtroom. He said that at the time of the incident he believes it was Deputy Ken Danielson who was working as his court room bailiff. He said that Danielson had advised him that a juror had asked if he could bring in a dictionary into the deliberation room. Deputy Danielson advised the juror that bringing in a dictionary was not allowed. Judge Keller said that he believes that Deputy Danielson advised him right away about this juror and what had happened. He told Deputy Danielson that he made the right decision in not allowing the juror to bring in a dictionary.

Judge Keller stated that to his best recollection he had lunch with Annie Wilson on one occasion. He said that he does not have much of a recollection as to what was discussed. He said that Hamlin's case may have come up in a conversation with Wilson. Judge Keller said that if it did it would have involved the basic status of the case.

A handwritten signature in cursive script, appearing to read "P. H. Danielson". The signature is written in dark ink and is located on the right side of the page.

RE: Richard Hamlin
P05CRF0161

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of El Dorado. I am over the age of eighteen years and not a party to the within entitled action; my business address is 630 Main Street, Placerville, California.

On August 22, 2006, I served the within SUPPLEMENTAL NOTICE
OF MOTION AND MOTION FOR NEW TRIAL on the parties in said action,
by hand:

Vicki Ashworth
EL DORADO COUNTY DISTRICT ATTORNEY
495 Main Street
Placerville, CA 95667

I, TARA J. ANGEL, declare under penalty of perjury, that the foregoing is true and correct.

Executed on August 22, 2006, at Placerville, California.


TARA J. ANGEL

1 PUBLIC DEFENDER'S OFFICE
2 El Dorado County
3 630 Main Street
4 Placerville, CA 95667
5 (530) 621-6440

6 Attorneys for Defendant

FILED

06 AUG 21 AM 9:11

ELDORADO COUNTY
SUPERIOR COURT

BY DEPUTY

8
9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF EL DORADO

11 STATE OF CALIFORNIA,

CASE NO.: P04CRF0132

12 Plaintiff,

SUPPLEMENTAL DECLARATION OF
PATRICIA REED

13 Vs.

14 RICHARD HAMLIN,
15 _____/

16 I, PATRICIA REED, declare as follows:

17 I was a juror in the above-entitled case.

18 I heard a conversation between, I believe, jurors John
19 Arnold, Robert Heissner, and Karen Lobaugh during deliberations
20 in the jury room, where they said Richard Hamlin was "scum" and
21 that he should receive the death penalty.
22

23 After Mr. Arnold told other jurors that he conducted an on-
24 line search for definitions of "great bodily injury", juror
25 Janet Johnson told Mr. Arnold, "You can't do that." It was
26 after the statement by Ms. Johnson that Mr. Arnold claimed he
27 did not find anything as a result of his on-line search.
28

1 Mr. Heissner was extremely rude to me. He definitely tried
2 to intimidate me as well as others who did not see things his
3 way. I definitely felt pressured into voting guilty by his
4 offensive behavior and attitude.

5 After verdicts were reached and just before going into
6 court for the reading of those verdicts, Mr. Heissner made a
7 blanket apology to the group of jurors, saying that he knew he
8 had been unpleasant to some people and that those people knew
9 who they were. He also said that he had opinions prior to the
10 completion of the trial that he had stated and he knew he
11 shouldn't have done that. He said that he had his mind made up
12 "ahead of time." After the verdicts were read, Mr. Heissner
13 rushed out of the jury room.

14 I declare under penalty of perjury that the foregoing is
15 true and correct and executed on August 18, 2006, at
16 Placerville, California.

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PATRICIA REED

RE: Richard Hamlin
P05CRF0161

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of El Dorado. I am over the age of eighteen years and not a party to the within entitled action; my business address is 630 Main Street, Placerville, California.

On August 21, 2006, I served the within SUPPLEMENTAL
DECLARATION OF PATRICIA REED on the parties in said action, by hand:

Vicki Ashworth
EL DORADO COUNTY DISTRICT ATTORNEY
515 Main Street
Placerville, CA 95667

I, TARA J. ANGEL, declare under penalty of perjury, that the foregoing is true and correct.

Executed on August 21, 2006, at Placerville, California.



TARA J. ANGEL

1 PUBLIC DEFENDER'S OFFICE
2 El Dorado County
3 630 Main Street
4 Placerville, CA 95667
5 (530) 621-6440

6 Attorneys for Defendant

FILED

06 AUG 21 AM 9:12

ELDORADO COUNTY
SUPERIOR COURT

BY AK DEPUTY

8
9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF EL DORADO

11 STATE OF CALIFORNIA,

CASE NO.: P04CRF0132

12 Plaintiff,

SUPPLEMENTAL DECLARATION OF
ROBERT VANCE

13 Vs.

14 RICHARD HAMLIN,

15 Defendant.
16 _____/

17 I, ROBERT VANCE, declare as follows:
18

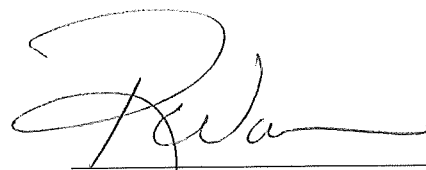
19 I was a juror in the above-entitled case.

20 Juror Robert Heissner was rude to juror Patricia Reed and
21 was intimidating to other jurors who disagreed with him. He was
22 abusive to other jurors from the beginning.

23 Since we as the jury are not to consider the punishment
24 when determining a verdict in a case, I was shocked when I heard
25 that torture is punishable by a sentence of life in prison.
26 Child molesters and rapists don't serve this much time. Having
27 to face the possibility of life in prison is like finding out
28

1 you have terminal cancer. I think a second opinion is
2 warranted!

3
4 I declare under penalty of perjury that the foregoing is
5 true and correct and executed on August 16, 2006, at
6 Placerville, California.
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11 ROBERT VANCE
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RE: Richard Hamlin
P05CRF0161

PROOF OF SERVICE

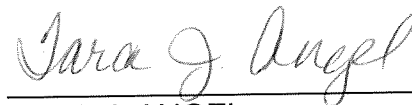
I am a citizen of the United States and a resident of the County of El Dorado. I am over the age of eighteen years and not a party to the within entitled action; my business address is 630 Main Street, Placerville, California.

On August 21, 2006, I served the within SUPPLEMENTAL
DECLARATION OF ROBERT VANCE on the parties in said action, by hand:

Vicki Ashworth
EL DORADO COUNTY DISTRICT ATTORNEY
515 Main Street
Placerville, CA 95667

I, TARA J. ANGEL, declare under penalty of perjury, that the foregoing is true and correct.

Executed on August 21, 2006, at Placerville, California.

A handwritten signature in cursive script, reading "Tara J. Angel", is written over a horizontal line.

TARA J. ANGEL

1 PUBLIC DEFENDER'S OFFICE
2 El Dorado County
3 630 Main Street
4 Placerville, CA 95667
5 (530) 621-6440

6 Attorneys for Defendant

FILED

06 AUG 21 AM 9:11

ELDORADO COUNTY
SUPERIOR COURT

BY *A* DEPUTY

8
9 SUPERIOR COURT OF CALIFORNIA

10 EL DORADO COUNTY

11 STATE OF CALIFORNIA,

CASE NO.: P04CRF0132

12 Plaintiff,

SUPPLEMENTAL DECLARATION OF
JANET JOHNSON

13 Vs.

14 RICHARD HAMLIN,

15 Defendant.
16
17 _____/

18 I, JANET JOHNSON, declare as follows:

19 I was a juror in the above-entitled case.

20 I am not persuaded that Richard Hamlin is guilty of torture
21 and I would not vote for guilty if I had it to do over.

22 I do not feel the prosecution proved Mr. Hamlin's guilt on
23 the torture charge.

24 I felt pressure to vote guilty.

25 I definitely do not think Mr. Hamlin should be sentenced to
26 life in prison.
27


28 I heard juror Robert Heissner ask the bailiff if he could

CMS

1 bring a dictionary into the jury room during deliberations. The
2 bailiff told him no. I do not know what happened to the
3 dictionary.
4

5 I heard Mr. Heissner call juror Patricia Reed "names"
6 during deliberation when Ms. Reed was not agreeing with Mr.
7 Heissner about Richard Hamlin's guilt.

8 I declare under penalty of perjury that the foregoing is
9 true and correct and executed on August 16, 2006, at
10 Placerville, California.
11

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14 JANET JOHNSON
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RE: Richard Hamlin
P05CRF0161

PROOF OF SERVICE

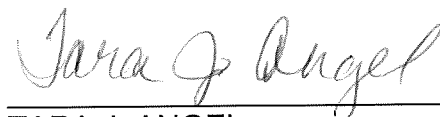
I am a citizen of the United States and a resident of the County of El Dorado. I am over the age of eighteen years and not a party to the within entitled action; my business address is 630 Main Street, Placerville, California.

On August 21, 2006, I served the within SUPPLEMENTAL
DECLARATION OF JANET JOHNSON on the parties in said action, by hand:

Vicki Ashworth
EL DORADO COUNTY DISTRICT ATTORNEY
515 Main Street
Placerville, CA 95667

I, TARA J. ANGEL, declare under penalty of perjury, that the foregoing is true and correct.

Executed on August 21, 2006, at Placerville, California.

A handwritten signature in cursive script, reading "Tara J. Angel", written in dark ink.

TARA J. ANGEL

1 PUBLIC DEFENDER'S OFFICE
2 El Dorado County
3 630 Main Street
4 Placerville, CA 95667
5 (530) 621-6440

6 Attorneys for RICHARD HAMLIN

FILED

06 AUG 21 AM 9:12

ELDORADO COUNTY
SUPERIOR COURT

BY  DEPUTY

7
8
9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF EL DORADO

11 STATE OF CALIFORNIA,

CASE NO.: P04CRF0132

12 Plaintiff,

SUPPLEMENTAL DECLARATION OF
JULIANNE FREY-KEELER

13 Vs.

14 RICHARD HAMLIN,

15 Defendant.
16 _____/

17 I, JULIANNE FREY-KEELER, declare as follows:
18

19 I told a reporter from the Mountain-Democrat that I worked
20 in a hospital emergency room and that victims of domestic
21 violence come from a range of economic circumstances. I told
22 the reporter that domestic violence can happen to anybody.

23 I declare under penalty of perjury that the foregoing is
24 true and correct and executed on August 16, 2006, at
25 Placerville, California.
26

27 
28 JULIANNE FREY-KEELER

RE: Richard Hamlin
P05CRF0161

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of El Dorado. I am over the age of eighteen years and not a party to the within entitled action; my business address is 630 Main Street, Placerville, California.

On August 21, 2006, I served the within SUPPLEMENTAL
DECLARATION OF JULIAN FREY-KEELER on the parties in said action, by
hand:

Vicki Ashworth
EL DORADO COUNTY DISTRICT ATTORNEY
515 Main Street
Placerville, CA 95667

I, TARA J. ANGEL, declare under penalty of perjury, that the foregoing is true and correct.

Executed on August 21, 2006, at Placerville, California.



TARA J. ANGEL

1 PUBLIC DEFENDER'S OFFICE
2 El Dorado County
3 630 Main Street
4 Placerville, CA 95667
5 (530) 621-6440

6 Attorneys for Defendant

FILED
06 AUG 21 AM 9:12
ELDORADO COUNTY
SUPERIOR COURT
BY [Signature] DEPUTY

9
10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF EL DORADO

12 STATE OF CALIFORNIA,

CASE NO.: P04CRF0132

13 Plaintiff,

DECLARATION OF
CYNTHIA HAYES

14 Vs.

15 RICHARD HAMLIN,

16 Defendant.

17 _____ /
18 I, CYNTHIA HAYES, declare as follows:

19 I am a licensed investigator.

20 I spoke to deputy sheriff Ken Danielson on May 18, 2006. I
21 introduced myself and he said he knew who I was. I offered him
22 one of my business cards but he refused it. He said he didn't
23 remember anything about a dictionary as it related to the above-
24 entitled case.
25

26 I spoke to juror Robert Heissner on March 22, 2006. He
27 told me that he brought a regular or legal dictionary with him
28 to court for use in deliberations. He told me that he asked the

1 bailiff if he could bring the dictionary into the jury room and
2 was told that he could not do that. Heissner told me he
3 surrendered the dictionary to the bailiff.
4

5 On April 3, 2006, I again spoke to Robert Heissner. He told
6 me that when he was told by the bailiff that he could not bring
7 the dictionary into the jury room, Heissner put the dictionary
8 back in his jacket pocket and it stayed there.

9 I declare under penalty of perjury that the foregoing is
10 true and correct and executed on August 16, 2006, at
11 Placerville, California.
12

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15 CYNTHIA HAYES
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RE: Richard Hamlin
P05CRF0161

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of El Dorado. I am over the age of eighteen years and not a party to the within entitled action; my business address is 630 Main Street, Placerville, California.

On August 21, 2006, I served the within DECLARATION OF CYNTHIA HAYES on the parties in said action, by hand:

Vicki Ashworth
EL DORADO COUNTY DISTRICT ATTORNEY
515 Main Street
Placerville, CA 95667

I, TARA J. ANGEL, declare under penalty of perjury, that the foregoing is true and correct.

Executed on August 21, 2006, at Placerville, California.



TARA J. ANGEL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO
495 Main Street
Placerville, CA 95667

People of the State of California
VS.
RICHARD WILLIAM HAMLIN

Case No: P04CRF0132

MINUTE ORDER

=====

HEARING RE: STATUS CONFERENCE

Date: 08/10/06 Time: 1:15 pm Dept/Div: 2

=====

Charges: 1) 206 PC-F C, 2) 273A(B) PC-M C, 3) 273A(B) PC-M C, 4) 273A(B)
5) 245(A)(1) PC-F A, 6) 422 PC-F C, 7) 273.5(A) PC-F Q
--- MORE CHARGES for this Case/defendant ---

Honorable Judge EDDIE T. KELLER presiding
Clerk: Dahlgren S.
Court Reporter S. STROMBERG
Bailiff M. GREGOR

Deputy District Attorney V. ASHWORTH present.
Defendant is present IN CUSTODY.
Defendant proceeds in Propria Persona.
Co-Counsel R. Banning of the Public Defender's
Office is present with the Defendant.

At 13:20 p.m. court convenes on the record.
Oral motion on behalf of Defense regarding continue motions and
J&S 30 days.

Regarding a possible motion to disqualify
Judge Keller;
Defense informs the Court that their investigator
found 4 other people that were present during
a particular conversation and only 1 has been
contacted - more time is needed.
Defense also wants to question Bailiff Ken
Danielson and a juror's question regarding a
dictionary.

The People object to any continuances.

Motion is GRANTED.
The Court allows a 3-week continuance to
09-01-06.

COURT ORDERS:
MX hearing set for 08/14/2006 at 13:30 is ordered vacated.

Motion RE: VARIOUS set for 09/01/2006 at 13:30 in Department 2.
JUDGMENT and SENTENCING set for 09/01/2006 at 13:30 in Dept. 2

COURT ORDERS:
Defense to file any supplemental affidavits
(other than the motion to disqualify) by 08-25-06

8/11/06

Page: 2

Case Number : P04CRF0132 People vs. RICHARD HAMLIN
=====

and the People have until prior to the hearing
to respond.

Defense Counsel informs the Court that he
wants to call witnesses at the motion for a new
trial and a few jurors are under subpena.
The People need to know who these witnesses
are and an offer of proof by 08-18-06.

At 13:37 p.m. court is adjourned.

CUSTODY STATUS
Remains remanded to the custody of the Sheriff.
Bail to remain as previously set.

cc: DIST ATTY / PUB DEF / RICHARD HAMLIN
C / O JAIL / JAIL TRANSPORTATION (*Faxed 8-11-06 + called 8-10-06*)
=====MINUTE ORDER END=====

Dispo

SUPER. R JURT OF CALIFORNIA, COUL. JF EL DORADO
495 Main Street
Placerville, CA 95667

People of the State of California
VS.
RICHARD WILLIAM HAMLIN

Case No: P04CRF0132

MINUTE ORDER

=====

EX-PARTE MINUTE ORDER RE: STATUS J&S

Date: 08/08/06 Time: 1:15 pm Dept/Div: 2

Charges: 1) 206 PC-F C, 2) 273A(B) PC-M C, 3) 273A(B) PC-M C, 4) 273A(B)
5) 245(A)(1) PC-F A, 6) 422 PC-F C, 7) 273.5(A) PC-F Q

--- MORE CHARGES for this Case/defendant ---

Honorable Judge EDDIE T. KELLER presiding

Clerk: C. Sanders

Court Reporter Not Reported

Bailiff Schmalz

Deputy District Attorney V. ASHWORTH present.

Public Defender R. Banning present.

Defendant is present IN CUSTODY.

Court; Counsel and Defendant meet and confer
in chambers off the record.

HEARING

Hearing RE: STATUS CONFERENCE set for 08/10/2006 at 13:15 in
Department 2.

Defendant is ordered back to Court.

IN RE: MOTIONS & JUDGMENT AND SENTENCING

Hearing on 08/14/2006 at 13:30 for J&S is Confirmed.

Defendant is ordered back to Court.

CUSTODY STATUS

Remanded to the custody of the Sheriff until next appearance.

Bail to remain as previously set.

CC:DA PD DEF JAIL PROB DCSS ATTY INT POLICE SHERIFF CHP PROG

=====MINUTE ORDER END=====

Dispo

MEDIA AGENCY (name): ABC NEWS CHANNEL/FREQUENCY NO.: PRIME TIME PERSON SUBMITTING REQUEST (name): MARNI MERKSAMER ADDRESS: 147 COLUMBUS AVE. 3rd Floor NY, NY 10023 Superior Courthouse Inset: name of court and name of judicial district and branch court, if any:		FOR COURT USE ONLY EL DORADO CO. SUPERIOR CT. FILED <u>8-7-06</u> BY <u>Shelly M. Wauer</u> Deputy	
TITLE OF CASE: Richard Hamlin # P04CR F0132		CASE NUMBER: # P04CR F0132	
NAME OF JUDGE: Judge Eddie T. Keller			
ORDER ON MEDIA REQUEST TO PERMIT COVERAGE			

AGENCY MAKING REQUEST (name):

1. a. ☐ No hearing was held.
 b. ☒ Date of hearing: **August 14th, 2006** Time: **1:30** Dept./Div.: Room:
2. The court considered all the relevant factors listed in subdivision (e)(3) of California Rules of Court, rule 980 (see reverse).
3. ☐ THE COURT FINDS (findings or a statement of decision are optional): ☐ Attached ☐ As follows:

THE COURT ORDERS

4. The request to photograph, record, or broadcast is:

a. ☐ denied.b. ☒ granted subject to the conditions in rule 980, California Rules of Court, AND the following:

- (1) ☐ The local rules of this court regulating media activity outside the courtroom (copy attached).
 (2) ☐ The order of the presiding or supervising judge regulating media activity outside the courtroom (copy attached).
 (3) ☐ Payment to the clerk of increased court-incurred costs of (specify): \$ ☐ to be determined.
 (4) ☐ The media agency shall demonstrate to the court that the proposed personnel and equipment comply with California Rules of Court, rule 980, and any local rule or order.
 (5) ☐ Personnel and equipment shall be placed ☐ as directed ☐ as indicated in the attachment ☐ as follows (specify):

(6) (i) ☐ The attached statement of agreed pooling arrangements is approved.(ii) ☐ A statement of agreed pooling arrangements satisfactory to the court shall be filed before coverage begins.(7) ☐ This order(i) ☐ shall not apply to allow coverage of proceedings that are continued.(ii) ☐ shall apply to allow coverage of proceedings that are continued.

(8) ☒ Other (specify): **TWO CAMERAS ONLY if: (1) the cameras do not make any noise, (2) do not obstruct anyone's view, (3) are used only during any sentencing proceedings. The same rules apply to any other recording device.**

5. Coverage granted in item 4b is permitted in the following proceedings:

a. ☐ All proceedings except those prohibited by California Rules of Court, rule 980, and those proceedings prohibited by further court order.b. ☐ Only the following proceedings (specify type or date or both):6. ☐ The order, made on (date):is ☐ terminated ☐ modified as follows (specify):7. ☐ Number of pages attached:Date: **8/7/06**

(See reverse for additional information)

JUDGE

ORDER ON MEDIA REQUEST TO PERMIT COVERAGE

Form Adopted by the
Judicial Council of California
MC-510 (New January 1, 1997)WEST GROUP
Official PublisherCal. Rules of Court,
rule 980(e)(4)

MEDIA AGENCY (name): <u>ABC NEWS</u> CHANNEL/FREQUENCY NO.: <u>PRIMETIME</u> PERSON SUBMITTING REQUEST (name): <u>MARNI MERKSAMER</u> ADDRESS: <u>147 COLUMBUS AVE. 3RD FLOOR</u> <u>NEW YORK, NY 10023</u> <u>Superior Courthouse</u>		FOR COURT USE ONLY
TELEPHONE NO.: <u>212-456-1595</u> (When Name of Court and name of judicial district and branch court, if any, is specified)		
TITLE OF CASE: <u>Richard Hamlin Case # P04CR F0132</u> NAME OF JUDGE: <u>Judge Eddie T. Keller</u>		
MEDIA REQUEST TO PHOTOGRAPH, RECORD, OR BROADCAST		
		CASE NUMBER: <u>#P04CR F0132</u>

1. PORTION OF THE PROCEEDINGS TO BE COVERED (e.g., particular witnesses at trial, the sentencing hearing, etc.):
Richard Hamlin's sentencing hearing, any and all witness impact statements.
2. DATE OF PROPOSED COVERAGE (specify):
August 14th (and the 15th if necessary)
(File this form at least five court days before the proposed coverage date. If not feasible, explain good cause for noncompliance.)
3. TYPE OF COVERAGE:

a. <input checked="" type="checkbox"/> TV camera and recorder	d. <input checked="" type="checkbox"/> Audio
b. <input type="checkbox"/> Still camera	e. <input type="checkbox"/> Other (specify):
c. <input type="checkbox"/> Motion picture camera	
4. ☒ SPECIAL REQUESTS OR ANTICIPATED PROBLEMS (specify):
We would like to have 2 cameras in the court room and possibly 3. We have 1 large camera and 2 small ones.
5. ☐ INCREASED COSTS. This agency acknowledges that it will be responsible for increased court-incurred costs. If any, resulting from this media coverage (estimate): \$
☐ Amount unknown
6. PROPOSED ORDER. A completed, proposed order on Judicial Council form MC-510 is attached (required by Cal. Rules of Court, rule 980(e)(1)).

CERTIFICATION

I certify that if the court permits media coverage in this case, all participating personnel in this media agency will be informed of and will abide by the provisions of California Rules of Court, rule 980, the provisions of the court order, and any additional restrictions imposed by the court.

Date:

MARNI MERKSAMER
 (TYPE OR PRINT NAME)

Marni Merksamer
 (SIGNATURE)

Telephone No.: 212-456-1595

Associate Story Editor
 (SUPERVISORY POSITION IN MEDIA AGENCY)

NOTICE OF HEARING (A hearing is optional.)

A HEARING will be held as follows:

Date:	Time:	Dept./Div.:	Room:
Address of the court:			

Clerk, by _____, Deputy

Adopted by the
 Judicial Council of California
 January 1, 1997

MEDIA REQUEST TO PHOTOGRAPH, RECORD,
 OR BROADCAST

Cal. Rules of Court,
 rule 980(e)(1)

American LegalNet, Inc.
 www.USCourtForms.com

ST. LOUIS COUNTY
SHERIFFS OFFICE

DEPUTY



1 GARY L. LACY
District Attorney
2 El Dorado County
515 Main Street
3 Placerville, California 95667
Telephone: (530)621-6472
4

5 Attorneys for Plaintiff
6

EL DORADO CO. SUPERIOR CT.
FILED July 13, 2006
BY [Signature] 4:55pm
Deputy

7 IN THE EL DORADO COUNTY SUPERIOR COURT
8 STATE OF CALIFORNIA

9 THE PEOPLE OF THE STATE
10 OF CALIFORNIA,
11 Plaintiff,

12 v.
13

14 RICHARD HAMLIN,
15 Defendant

CASE NO. P05CRF0161

PEOPLE'S RESPONSE TO
DEFENSE MOTION OBJECTING
TO SENTENCE AS CRUEL AND
UNUSUAL PUNISHMENT

Hearing: August 14, 2006
Time: 1:30 p.m.
Department: 2

16 To RICHARD HAMLIN and his co-counsel of record, ROBERT BANNING please take notice
17 that the People oppose the Motion Objecting to the Sentence as Cruel and Unusual Punishment.
18 The response is based on the following points and authorities, all pleadings, records, transcripts
19 and files pertaining to the jury trial and relevant motions, and on such oral and documentary
20 evidence as may be presented at the time of the hearing.

21 **STATEMENT OF FACTS**

22 As this court presided over the entire jury trial, including deliberations, the People hereby
23 request that the Court take judicial notice of all the evidence presented to it as our Statement of
24 Facts and incorporate by reference herein. The People note that a transcript has been prepared as
25 to a significant portion of all trial testimony in this case.
26
27
28

1 I.

2 A LIFE SENTENCE IN THIS CASE DOES NOT CONSTITUTE
3 CRUEL AND UNUSUAL PUNISHMENT

4 A.

5 A LIFE TERM FOR THE DEFENDANT DOES NOT VIOLATE
6 THE CALIFORNIA CONSTITUTION

7 Relying primarily upon *People v. Dillon* (1983) 34 Cal.3d 441 and *In re Lynch* (1972) 8
8 Cal.3d 410 (*Lynch*), defendant contends that imposition of a life term in this case constitutes
9 cruel and/or unusual punishment under the federal and state Constitutions. (U.S. Const., 8th
10 Amend.; Cal. Const., art. I, §17.) Defendant addresses this contention as one that challenges
11 defendant's potential life sentence, given that the test is "whether the maximum term of
12 imprisonment permitted by the statute punishing his offense exceeds the constitutional limit . . . "
13 (*Lynch*, at p. 419.)

14 *Lynch* devised three "techniques" for assessing whether punishment is cruel or unusual.
15 In order to determine if a punishment "is so disproportionate to the crime for which it is inflicted
16 that it shocks the conscience and offends fundamental notions of human dignity" (*Id* at p. 424, fn.
17 omitted), courts may (1) consider "the nature of the offense and/or the offender, with particular
18 regard to the degree of danger both present to society" (*Id.* at p. 425), (2) compare the
19 punishment to other punishments imposed by the same jurisdiction for more serious offenses (*Id.*
20 at p. 426), and (3) compare the punishment to other punishments imposed by other jurisdictions
21 for the same offense. (*Id.* at p. 427).

22 1. Nature of the Offense and the Offender

23 An examination of the offense and offender in this case leads to the conclusion that
24 sentencing the defendant to life imprisonment is not cruel nor unusual. In considering the nature
25 of the offense and the offender, this court must evaluate "the totality of the circumstances
26 surrounding the commission of the offense in the case at bar, including such factors as its motive,
27

1 the way it was committed, the extent of the defendant's involvement, and the consequences of his
2 acts." (*People v. Dillon, supra*, 34 Cal.3d at p. 479.) This court must also focus on the particular
3 offender's "individual culpability as shown by such factors as his age, prior criminality, personal
4 characteristics, and state of mind." (*Ibid.*)

5 In order to reach the conclusion that the defendant's actions in this case more than
6 warrant the mandatory life sentence here, it is helpful to review other cases in California that
7 involve a conviction for torture, in violation of Penal Code §206:

8 In *People v. Pre* (2004) 117 Cal.App.4th 413, the defendant forced entry into the victim's
9 apartment and proceeded to beat her and then choke her until she was unconscious. When she
10 came to, the defendant was biting the victim's ear and the defendant again choked her into
11 unconsciousness. The defendant then stole the victim's purse and left her apartment. The victim
12 had a fractured cheek, fractured ribs, a fractured finger, injury to an internal organ, a bite to her
13 ear that required more than 100 stitches and other injuries. Although it is not indicated in the
14 opinion, it appears that this attack took place over a short period of time (perhaps a couple of
15 hours at most).

16 In *People v. Barrera* (1993) 14 Cal.App.4th 1555, the victim was chased into his
17 apartment by four men where a gun was held to his head and a knife to his throat as money was
18 demanded. The victim was then shot in the leg and forced to walk to a shed to open it and give
19 the robbers money. After the attack, the victim was in the hospital for three days with an open-
20 fracture to his leg. This appears to be the only injury the victim received during the brief attack
21 (it again looks like a couple of hours at most).

22 Finally, in *People v. Jung* (1999) 71 Cal.App.4th 1036, the victim, a member a gang, was
23 taken by members of a rival gang to a home where he was beat, disrobed, bitten, tattooed, made
24 to dance and pose in girl's clothing and blindfolded amongst other things. The offense took
25 place over several hours and although the victim had some marks and tattoos on him, he did not
26 suffer any broken bones or other more serious injuries from the incident.

1 There are many other cases involving a torture conviction, [see *People v. Martinez* (2005)
2 125 Cal.App.4th 1035; *People v. Hale* (1999) 75 Cal.App.94; and *People v. Baker* (2002) 98
3 Cal.App.4th 1217] and as the court can see, the injuries and actions that constitute torture under
4 Penal Code Section 206 as far-ranging. However, of note is that in each of those cases, the
5 violence and state of mind of the defendant(s) that constituted torture were, generally, acts that
6 occurred over a period of just a couple of hours to a day at the most.

7 The offense of torture, set forth in Penal Code §206, is a serious felony offense requiring
8 great bodily injury and specific intent by the defendant. In the present case, the offense of torture
9 (Count 1) was committed over a long and continuous period of time. Testimony received from
10 the victim as well as others indicated that the defendant began the process of alienating the
11 victim from her family and friends approximately five years before the offense (or around 1999-
12 2000). The victim also indicated that the defendant slowly began his physical abuse of her about
13 the same period of time. Count 1 encompasses the dates from June 1, 2003 - February 28, 2004.
14 As this court is aware from testimony it received during the jury trial, the defendant physically,
15 emotionally and mentally abused the victim during this period of time on a daily basis.
16 Additionally, the victim sustained major injuries in this case that easily constitute great bodily
17 injury within the meaning of the statute. Some of the injuries the victim received during this
18 time were: numerous bruises to almost every part of her body, a broken nose, broken ribs, a cut
19 finger, stab wounds to her scalp from a ball point pen, “cauliflower ears”, and bleeding injuries.
20 The victim testified that she still has pain to her rib area and Dr. Arnold testified that the broken
21 ribs he observed on the x-rays were of differing vintage, meaning they appear to have occurred at
22 different times (or could have been broken once, started to heal, and then were broke again).

23 Also of significance in evaluating the “nature of the offense” under the first prong of
24 *Lynch* is the number of and different types of weapons that were used by the defendant to inflict
25 the numerous physical injuries, including: his fists, pieces of wood, piece of pipe, a ball point
26 pen, a sword, a taser and guns.

1 During his nine-month reign of daily torture, the defendant also emotionally and mentally
2 abused the victim with the purpose behind his crimes. As the court heard through testimony, the
3 defendant had moved his, allegedly lucrative, law practice into his home around December, 2002
4 or January, 2003. It was also during this time that the family had financial difficulties. It was
5 through the defendant's own selfish need for control and blatant disregard for his entire family
6 that he started building upon a memory the victim had shared a couple of years earlier. From that
7 one memory, the defendant sadistically created an elaborate fictitious story and forcibly
8 persuaded the victim to not only go along with the story, but also to remember and begin to
9 believe the story of molest in order to seek a large sum of money from his father-in-law. The
10 defendant forced this story upon the victim through multiple and almost daily episodes of
11 physical abuse, of which two such incidents were tape-recorded and played during the jury trial.
12 Those audio tapes showed the defendant's true state of mind as he beat the victim.

13 The defendant also utilized his children in accomplishing his mental and emotional abuse
14 against the victim. The defendant would tell the children that their mom (the victim) was crazy
15 and that he only hit her when her "demon personality" came out, he had his sons hold weapons to
16 their mother, and told the children repeatedly that their mother had molested them even though
17 none of them had any recollection of this occurring. There is absolutely no plausible reason to
18 use one's children in this regard and turn them against their mother.

19 When looking at the present set of facts, the nature of the offense under the *Lynch* test
20 more than justifies imposition of a life sentence.

21 However, the defendant also argues that he was an attorney with no past criminal history,
22 has been a model prisoner and has participated in programs to better himself. The defendant
23 seems to argue that a life sentence is not appropriate in this case, as it would be
24 disproportionate, because he is a good person who has not been in trouble before. The People
25 submit that his argument is completely lacking. In the present case, the defendant continually
26 minimizes his crimes in this case as well as his responsibility for the offenses. This reflects on
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1 the defendant regarding the “nature of the offender” prong under the *Lynch* test. With regard to
2 the defendant’s state of mind, the evidence showed that the defendant is an insecure and
3 controlling individual. His act of gradually cutting off his victim’s contact with her family and
4 then close friends was very calculated and done for the purpose of continuing his abuse upon the
5 victim in an attempt to reap some financial gain. Additionally, as indicated above, the
6 defendant’s abuse of the victim spanned almost five years, growing in frequency as well as
7 intensity over the last nine months or so.

8 The case of *People v. Barrera* (1993) 14 Cal.App.4th 1555 also states what to consider
9 under “nature of the offender”. There the court, in speaking of the defendant there, said: “His
10 state of mind at the time the crime was committed was that of a principal and perpetrator who
11 acted cruelly and intentionally in order to inflict pain upon his unarmed, out-numbered victim for
12 the purpose of obtaining the victim’s cooperation to further his financial gain.” (*Id.* at p. 1568.).
13 This quote may as well be a description of the defendant in the present case.

14 For all of the reasons stated above, the defendant has failed to show that a life sentence is
15 grossly disproportionate in light of the nature of the offense.

16 **2. Intrajurisdictional Comparison**

17 Although the California Supreme Court applied the second and third *Lynch* techniques
18 after employing the first technique to analyze the “nature of the offense and/or the offender,” it
19 did not announce a rigid three-part test that would require California courts to employ all three
20 techniques in every case challenging a sentence under the Eighth Amendment or the cruel and
21 unusual punishment clause of the California Constitution. Thus, a California court need not
22 consider the second or third *Lynch* techniques if, as here, application of the first *Lynch* technique
23 does not raise an inference of gross proportionality. The United State Supreme Court has
24 reached a similar conclusion in its Eighth Amendment jurisprudence. (See *Haremelin v.*
25 *Michigan* (1991) 501 U.S. 957, 1005 (*Harmelin*) [“intrajurisdictional and interjurisdictional
26 analyses are appropriate only in the rare case in which a threshold comparison of the crime
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1 committed and the sentence imposed leads to an inference of gross disproportionality”].

2 Under the second prong of *Lynch*, the defendant must prove that his punishment is more
3 severe than those for other more serious crimes in California. (*Lynch, supra*, 8 Cal.3d at pp. 427-
4 429.) As to this requirement, the defendant, here, argues that his punishment would be worse
5 than that of second degree murder (15 years to life); gross vehicular manslaughter (10 year
6 maximum); aggravated mayhem (15 years to life), as well as number of other offenses.

7 This comparison is not at all helpful to the defendant. First, a life sentence under Penal
8 Code §206 is interpreted as serving a minimum of seven years (to life) within Penal Code §3046.
9 This means that once the defendant is sentenced to a life term, he could theoretically be released
10 from state prison within seven years. This decision is within the control of the State
11 Prison/Parole system. Second, although it the defendant argues that these other crimes are more
12 serious than his offense of torture, such is not the case. In fact, the defendant’s conviction of
13 torture in this case was well founded. It was not simply a one day episode of extreme violence
14 that the defendant inflicted upon the victim, but rather a nine-month reign of hell upon not only
15 his victim, but their children as well. In fact, the offense of torture in this case is far worse than
16 murder because the defendant’s victim must live with the painful memories and nightmares of
17 the torture, she was forced to live through, for the rest of her life. Additionally, it is not only the
18 victim, Susan Hamlin, who suffered irreparable harm in this case. The couple’s four children are
19 also victims due to the defendant’s actions. The children all suffered emotional and mental abuse
20 because of falsities the defendant told them, and had them believing, about their mother. At least
21 one of the children is still undergoing counseling due to remaining issues.

22 Further, the defendant argues that punishing him by imposing a life sentence would be
23 cruel and unusual punishment because it is not as serious as other cases involving the same
24 offense.

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1 Here, a Court's analysis of California's "Three Strikes" sentencing scheme (§§1170.12
2 and 667, subds. (b)-(i)) is instructive:

3 Whether a particular punishment is disproportionate to the offense is a question of
4 degree. The choice of fitting and proper penalty is not an exact science but a
5 legislative skill involving an appraisal of the evils to be corrected, the weighing of
6 practical alternatives, consideration of relevant policy factors, and responsiveness
7 to the public will. In some cases, leeway for experimentation may be permissible.
8 Thus, the judiciary should not interfere in the process unless a statute prescribed a
9 penalty "out of all proportion to the offense." [Citation.]

10 (*People v. Cooper* (1996) 43 Cal.App.4th 815, 827, quoting *Lynch*, 8 Cal.3d at pp.423-424.)

11 In fact, the defense carelessly indicates that a life sentence is "wrong" in this case because
12 the victim "is alive and appears to be a healthy and thriving adult" and that, after all, she is not
13 disabled or disfigured, was not hospitalized, and was not knocked unconscious. The defense
14 completely misses the point by arguing that the defendant's conduct is "most accurately covered
15 by the laws prohibiting spousal abuse." (Defense Motion at p. 37:1-2.). His argument focuses
16 just on the injuries to the victim.

17 In case after case on appeal regarding a conviction for torture, the courts indicate that the
18 main consideration is NOT injury to the victim, but rather the state of mind of the perpetrator. It
19 is the perpetrator's state of mind that makes this crime so different from other crimes. (See
20 *People v. Barrera* (1999), 14 Cal.App.4th 1555; *People v. Pre* (2004), 117 Cal.App.4th 413;
21 *People v. Jung* (1999) 71 Cal.App.4th 1036; and *People v. Hale* (1999) 75 Cal.App.4th 94).
22 Specifically contrary to the defense argument, the court in *People v. Jung* states "[t]hat other
23 victims of torture may have suffered more than the victim in this case sheds no light on the
24 sufficiency of the evidence of defendants' intent to cause [the victim] severe pain and suffering."
25 (*Id.* at p.1043.). Also, in *People v. Hale, supra*, the court stated that "[the defendant]misses the
26 critical point that torture as defined in section 206 focuses on the mental state of the perpetrator
27 and not the actual pain inflicted." (*Id.* at p. 108, citing *People v. Jung, supra* at pp.1042-1043.)
28 Finally, as so succinctly stated in the case of *Barrera*, the defendant's brief "continually attempts
to minimize the offense, labeling it merely . . ." a case of domestic violence, " . . . but under these

1 facts his conduct was manifestly more than that. His actions were cold-blooded, calculated,
2 motivated by financial gain, and resulted in a great cost to his victim.” (*Id.* at p. 1567.)

3 In the current case, defendant’s crimes represent a realistic threat to multiple victims and
4 to the health of the community as a whole. Under these circumstances, defendant’s crime of
5 torture is not so easily compared to a crime like murder, which results in harm to only one
6 victim. Seen in this context, *defendant’s* penalty of life in prison is not constitutionally out of
7 line with other California punishments. The defendant has failed to make the second showing of
8 *Lynch*.

9 **3. Interjurisdictional Comparison**

10 The third prong of the *Lynch* test requires comparison of punishment for the same offense
11 in other jurisdictions. (*Lynch, supra*, 8 Cal.3d at p. 427.) Here, defendant contends that the
12 sentence for torture is disproportionately harsh and inflexible compared to sentences imposed by
13 other states. However, the defendant is not able to point to other states that have a torture offense
14 contained in their Penal Code. Additionally, the defendant spends an inordinate amount of time
15 describing and comparing his offense to that of the “torturing” and humiliation of prisoners in
16 Guantanamo Bay, Cuba. This comparison is not only irrelevant, but also absurd. First, those
17 offenses involved mostly acts of “humiliation”, not physical violence. Second, the case included
18 many perpetrators against a number of prisoners. To compare any punishment against those
19 persons would be like the People arguing here that the defendant’s life sentence for his torture
20 conviction was far too lenient in light of countries such as Nigeria sentencing a person to death
21 for adultery or Saudi Arabia imposing a death sentence for an act of sodomy. As indicated, this
22 type of argument has no place in these proceedings. Instead, this is nothing more than the
23 defendant’s far-reaching attempts to solicit sympathy and pity from this court to impose
24 something less than a life sentence in this case; a sentence which is mandated by law under Penal
25 Code Section 206.1 and certainly deserved by this defendant.

26 In fact, in *People v. Barrera*,(1993), *supra*, the court indicated that its “review of the
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1 statutes of the various states reveals torture is not a separately punished crime in any state but
2 California. Therefore, this last part of the cruel or unusual punishment test cannot be assessed.”
3 (*Id.* at p. 1570.). The People submit that nothing has changed since that opinion and there is no
4 appropriate or meaningful “interjurisdictional comparison” that can be done.

5 Given all the circumstances, under the California Constitution, to impose a life sentence
6 in this case is not “so disproportionate to the crime for which it is inflicted that it shocks the
7 conscience and offends fundamental notions of human dignity.” (*Lynch*, 8 Cal.3d at p. 424, fn.
8 omitted.) As a result, defendant’s claim of cruel and/or unusual punishment fails.

9 **B.**

10 **A life sentence for defendant Does Not Violate the Federal Constitution**

11 The Eighth Amendment, which applied against the states under the Fourteenth
12 Amendment (see *Robinson v. California* (1962) 370 U.S. 660), provides: “Excessive bail shall
13 not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” (See
14 *Harmelin, supra*, 501 U.S. at p. 962.) Under the Eighth Amendment, challenges to the length of
15 a sentence are rarely granted. (*Solem, supra*, 463 U.S. at pp. 289-290 [“Outside the context of
16 capital punishment, *successful* challenges to the proportionality of particular sentences [will be]
17 exceedingly rare”] (original italics, fn. omitted)).) The United States Supreme Court has
18 cautioned that reviewing courts “should grant substantial deference to the broad authority that
19 legislatures necessarily possess in determining the types and limits of punishments for crimes, as
20 well as to the discretion that trial courts possess in sentencing convicted criminals.” (*Id.* at p.
21 290, fn. omitted.)

22 In a 5-to-4 decision in *Solem*, 463 U.S. at page 290, the United States Supreme Court held
23 that “a criminal sentence must be proportionate to the crime for which the defendant has been
24 convicted.” In the Supreme Court’s more recent decision in *Harmelin*, however, a divided Court
25 retreated from *Solem* and rejected the notion that the Eighth Amendment requires strict
26 proportionality between a sentence and the offense for which it is imposed. The author of the
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1 lead opinion for the Court in *Harmelin*, Justice Scalia, joined by Chief Justice Rehnquist,
2 concluded that “*Solem* was simply wrong; the Eighth Amendment contains no proportionality
3 guarantee.” (*Harmelin*, supra, 501 U.S. at p.965.) In the concurring plurality opinion in
4 *Harmelin*, Justice Kennedy, joined by Justices O’Connor and Souter, concluded that although the
5 cruel and unusual punishments clause “encompasses a narrow proportionality principle,” the
6 Eighth Amendment “does not require strict proportionality between crime and sentence. Rather,
7 it forbids only extreme sentences that are ‘grossly disproportionate’ to the crime.” (*Harmelin*,
8 supra, 501 U.S. at pp.997, 1001, citing *Solem*, supra, 463 U.S. at pp. 288, 303.)

9 One commentator has observed that the *Harmelin* decision “undeniably curtails the
10 authority of appellate courts to conduct proportionality review,” and “requires courts to pay great
11 deference to legislative judgments concerning both the goals of criminal punishment and the
12 length of sentences necessary to attain those goals.” (Harv. L.Rev. Assn., Cruel and Unusual
13 Punishments Clause - Proportionality in Sentencing: *Harmelin v. Michigan* (1991) 105 Harv. L.
14 Rev. 245, 251.)

15 As demonstrated above, defendant’s sentence does not violate the California
16 Constitution. Since that Constitution’s ban against cruel and unusual punishment arguably
17 affords broader protection than the United States Constitution’s, a punishment that satisfies the
18 California standard necessarily also satisfies the federal standard. (Cf. *People v. Anderson*
19 (1972) 6 Cal.3d 628.) California case law recognizes that the federal prohibition against cruel
20 and unusual punishment offers no greater protections than the analogous state constitutional
21 provision. (See *People v. Martinez*, supra, 71 Cal.App.4th at p. 1510.) It naturally follows that
22 imposing a life term on the defendant for his conviction for torture, among other offenses, does
23 not offend the federal Constitution.

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1 **CONCLUSION**

2 Based on the foregoing argument, the People respectfully request that this court deny the
3 defense motion with a finding that imposing a life sentence for a conviction of Penal Code §206
4 does not constitute cruel and unusual punishment. The People also respectfully request that this
5 court then impose such sentence upon the defendant in this case.

6 Date: July 12, 2006

7 Respectfully submitted,

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EL DORADO CO. SUPERIOR CT.
FILED July 13, 2006
BY [Signature] 4:55 pm
Deputy

8 IN THE EL DORADO COUNTY SUPERIOR COURT
9 STATE OF CALIFORNIA

10 THE PEOPLE OF THE STATE
11 OF CALIFORNIA, Plaintiff,

12 v.

13 RICHARD HAMLIN,
14 Defendant

CASE NO. P05CRF0161

PEOPLE'S RESPONSE TO
DEFENSE MOTION FOR A NEW
TRIAL

Hearing: August 14, 2006
Time: 1:30 p.m.
Department: 2

15
16 To RICHARD HAMLIN and his co-counsel of record, ROBERT BANNING please take notice
17 that the People oppose the Motion for a New Trial. The response is based on the following
18 points and authorities, all pleadings, attachments, records, transcripts and files pertaining to the
19 jury trial and relevant motions, and on such oral and documentary evidence as may be presented
20 at the time of the hearing.

21 **STATEMENT OF FACTS**

22 As this court presided over the entire jury trial, including deliberations, the People hereby
23 request that the Court take judicial notice of all the evidence presented to it as our Statement of
24 Facts and incorporate by reference herein. The People note that a transcript has been prepared as
25 to a significant portion of all trial testimony in this case.

CMS
SD

STANDARD FOR NEW TRIAL MOTION (GENERALLY)

Penal Code Section 1181, subdivision 6, requires a court to grant a new trial to a defendant if the verdict “is contrary to law or evidence.” In ruling on a motion for new trial on this ground, the trial court is not bound by the jury’s resolution of conflicts in the evidence or inferences to be drawn. Rather, the court must independently weigh the evidence (*People v. Price* (1992) 4 Cal.App.4th 1272, 1275.)

“While it is the exclusive province of the jury to find the facts, it is the duty of the trial court to see that this function is intelligently and justly performed, and in the exercise of its supervisory power over the verdict, the court, on motion for new trial, should consider the probative force of the evidence and satisfy itself that the evidence as a whole is sufficient to sustain the verdict.” (*People v. Robarge* (1953) 41 Cal.2d 628, 633.)

Even so, the court should not ignore the verdict. (*People v. Lopez* (1969 1 Cal.App.3d 78, 85.) The courts have discredited the view that the court acts as the “thirteenth juror,” as “unfortunate” and “misleading”. (*People v. Robarge, supra* at p. 634; and see *People v. Veitch* (1982) 128 Cal.App.3d 460, 467-68.)

It has been stated that a defendant is entitled to two decisions on the evidence, one by the jury and the other by the court on motion for a new trial. This does not mean, however, that the court should disregard the verdict or that it should decide what result it would have reached if the case had been tried without a jury, but instead that it should consider the proper weight to be accorded to the evidence and then decide whether or not, in its opinion, there is sufficient credible evidence to support the verdict.

People v. Robarge, supra at p. 633; similarly, see *People v. Trotter* (1984) 160 Cal.App.3d 1217, 1221.

On appeal, factual findings are reviewed under a deferential substantial evidence standard. This standard asks whether, considering the entire record, there is substantial evidence, contradicted or uncontradicted, that supports the result in the lower court. (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 680-681.)

In applying the substantial evidence standard, the court must accept the evidence in the

light most favorable to the judgment or order and must presume in favor of the judgment or order the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Johnson* (1993) 6 Cal.4th 1, 38.) The factual finding supported by substantial evidence should stand even if there is other evidence, direct or circumstantial, supporting a contrary conclusion. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037; *In re Terry D.* (1978) 83 Cal.App.3d 890, 899; *In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114; *People v. Jennings* (1970) 10 Cal.App.3d 712, 715.)

While a question of the sufficiency of the evidence as a matter of law, to support a verdict or finding, may be presented to the appellate court for review, its duty stops when it has determined that there is some substantial supporting evidence, contradicted or uncontradicted; such a court will not weigh the evidence, pass on credibility of witnesses, or substitute its judgment for that of the trial court, but will uphold the verdict or finding even though it might have decided otherwise if it had occupied the place of the trial judge or jury.

(*People v. Belcher* (1961) 189 Cal.App.2d 404, 407; similarly see *People v. Ceja* (1993) 4 Cal.4th 1134, 1138-1139.) “And of course ‘[w]hen two or more inferences can reasonably be deduced from the facts,’ either deduction will be supported by substantial evidence and ‘a reviewing court is without power to substitute its deductions for those of the trial court.’ [Citations.]” (*In re Eric J.* (1979) 25 Cal.3d 522, 527.)

Not all evidence is substantial. To be substantial, the evidence must have ponderable legal significance. And not just any evidence is substantial. The evidence must be “reasonable in nature, credibility, and of solid value.” (*People v. Superior Court (Jones)*, *supra*, 18 Cal.4th at p. 682.)

NO JUROR MISCONDUCT EXISTS HERE TO WARRANT A NEW TRIAL

The standards to be applied to the consideration of evidence of jury misconduct are reasonably clear. Proof of misconduct by a juror raises a presumption of prejudice. But the presumption is not conclusive - it may be rebutted by proof that no prejudice actually resulted from the misconduct. (*In re Carpenter* (1995) 9 Cal.4th 634, 653; *People v. Holloway* (1990) 50

1 Cal.3d 1098, 1108-1109; *People v. Pierce* (1979) 24 Cal.3d 199, 207; *People v. Honeycutt*
2 (1977) 20 Cal.3d 150, 156.) The presumption may be rebutted by affirmative evidence or by
3 consideration of the entire record, including the nature of the misconduct and the surrounding
4 circumstances, showing there is no reasonable probability of actual harm from the misconduct.
5 (*In re Hamilton* (1999) 20 Cal.4th 273, 295-296; *In re Hitchings* (1993) 6 Cal.4th 97, 119;
6 *People v. Von Villas* (1992) 11 Cal.App.4th 175, 256.)

7 The standard to be applied by the trial court was stated in *People v. Marshall* (1990) 50
8 Cal.3d 907, as follows:

9 A judgment adverse to a defendant in a criminal case must be reversed or vacated
10 “whenever . . . the court finds a substantial likelihood that the vote of one or more
11 jurors was influenced by exposure to prejudicial matter relating to the defendant
12 or to the case itself that was not part of the trial record on which the case was
submitted to the jury.” “The ultimate issue of influence on the juror is resolved by
reference to the substantial likelihood test, an objective standard.”

13 (*Id.* at pp.950-951; *People v. Holloway, supra*, 50 Cal.3d at p. 1109.)

14 A substantial likelihood of bias can be found in two ways. First, the extrajudicial
15 material, judged objectively, may be inherently and substantially likely to have influenced the
16 juror, in light of the entire record. Alternatively, the nature of the misconduct and its surrounding
17 circumstances may establish a substantial likelihood the juror was actually biased against the
18 defendant, even though the material was not inherently prejudicial. (*In re Carpenter, supra*, 9
19 Cal.4th at pp. 653-654.)

20 Not every insignificant infraction of the rules by a juror meets the substantial likelihood
21 test and requires that a new trial be granted. Misconduct of a nature so trifling that it could not
22 have prevented either party from having a fair trial will not cause a verdict to be set aside.
23 (*People v. Miranda* (1987) 44 Cal.3d 57, 118; *People v. Sutter* (1982) 134 Cal.App.3d 806, 821.)
24 And, courts have often held that a passing reference to improper matter in the course of
25 deliberations, which does not indicate a deliberate refusal to follow the court’s instructions, is not
26 prejudicial.

1 Minor jury misconduct is tolerated because, ““It is an impossible standard to require . . .
2 [the jury]to be a laboratory, completely sterilized and freed from any external factors.”” (*People*
3 *v. Marshall, supra*, 50 Cal.3d at p. 950.) Indeed, the humanness of the jury system is both its
4 strength and its weakness - jurors have foibles as well as virtues. The courts must accept a
5 certain amount of imperfection short of actual bias if the jury system is to function at all. To
6 demand theoretical perfection from every juror during the course of a trial is unrealistic and
7 would render the criminal justice system impotent. (*In re Carpenter, supra*, 9 Cal.4th at pp. 654-
8 655; see also *In re Hamilton, supra*, 20 Cal.4th at p. 296.

9 Finally, in *People v. Von Villas, supra*, 11 Cal.App.4th 175, 258, the court adopted the
10 concern expressed by Justice Mosk in his concurring opinion in *Ballard v. Uribe* (1986) 41
11 Cal.3d 564, 575. Justice Mosk wrote:

12 I must express my apprehension at an incipient trend, that of losing parties
13 attempting to impeach jury verdicts. We see this in numerous appeals and
14 petitions for review based on juror affidavits. Giving such appeals and petitions
15 any credence prevents the finality of judgments, places additional burdens on the
16 judicial process, and contributes to disenchantment with the tort system . . . [P] In
17 most cases it is not difficult for counsel to persuade a juror to sign a law-office-
18 prepared affidavit.”

19 In *People v. Dorsey* (1995) 34 Cal.App.4th 694, the court set forth a three-part process
20 the court must undertake when a party seeks a new trial based upon jury misconduct. That
21 process is: 1) Determine whether the affidavits in support of the motion are admissible, 2)
22 Determine whether the facts establish misconduct, and 3) determine whether the misconduct was
23 prejudicial. (See *People v. Dorsey, supra*, 34 Cal.App.4th 694; *People v. Hord* (1993) 15
24 Cal.App.4th 711, 724; *People v. Perez* (1992) 4 Cal.App.4th 893, 906.)

25 A. DETERMINATION REGARDING ADMISSIBILITY OF THE AFFIDAVITS

26 Evidence Code section 1150, subdivision (a), states:

27 Upon an inquiry as to the validity of a verdict, any otherwise admissible
28 evidence may be received as to statements made, or conduct, conditions, or
events occurring, either within or without the jury room, of such a character
as is likely to have influenced the verdict improperly. *No evidence is*

1 *admissible to show the effect of such statement, conduct, condition, or event*
2 *upon a juror either in influencing him to assent to or dissent from the*
3 *verdict or concerning the mental processes by which it was determined.*
4 (Emphasis added.)

5 In the leading case of *People v. Hutchinson* (1969) 71 Cal.2d 342, the court
6 explained the purposes behind this strict rule:

7 This limitation prevents one juror from upsetting a verdict of the whole jury
8 by impugning his own or his fellow jurors' mental processes or reasons for
9 assent or dissent. The only improper influences that may be proved under
10 section 1150 to impeach a verdict, therefore, are those open to sight,
11 hearing, and the other senses *and are thus subject to corroboration. . . .*
12 [A]dmission of jurors' affidavits within the limits set by section 1150
13 protects the stability of verdicts

14 (*Id.* at p. 350, emphasis added.)

15 The prohibition of Evidence Code section 1150 extends beyond statements of
16 jurors of their own mental processes and conclusions regarding the mental processes of
17 other jurors. It also prohibits statements made by other jurors which are merely reflective
18 of their mental processes. (*People v. Hedgecock* (1990) 51 Cal.3d 395, 418-419.) Thus,
19 in *People v. Elkins* (1981) 123 Cal.App.3d 632, the court held inadmissible affidavits of
20 two jurors which purported to recite statements made by another juror. The statements of
21 that juror consisted of his erroneous interpretation of instructions given by the court
22 which, apparently, other jurors believed. The court explained why such evidence was
23 prohibited. "The subjective quality of one juror's reasoning is not purged by the fact that
24 another juror heard and remembers the verbalization of that reasoning. To hold otherwise
25 would destroy the rule of *Hutchinson* which clearly prohibits the upsetting of a jury
26 verdict by assailing these subjective mental processes. It would also inhibit and restrict
27 the free exchange of ideas during the jury's deliberations." (*Id.* at p. 638; similarly see
28 *Ford v. Bennacka* (1990) 226 Cal.App.3d 330.)

29 In this case, the defense submits three declarations from jurors including Ms.
30 Reed, Mr. Vance and Ms. Johnson. Contained in those declarations are statements that

1 are clearly inadmissible under Evidence Code Section 1150 as they relate to the mental
2 processes of another juror and the People respectfully request that this court strike those
3 portions and not consider the statements in conjunction with the defense motion.
4 Example of such inadmissible statements are: Mr. Vance's affidavit, page 2, lines 3-4,
5 the statement is made that another juror threatened to walk out when he was "apparently
6 in disagreement with the way deliberations were proceeding." This same type of
7 statement is reiterated in Ms. Reed and Ms. Johnson's affidavit. This is improper
8 evidence under Evidence Code Section 1150 and is speculation at best. This goes to Mr.
9 Heissner's mental processes or emotions during the deliberation process and should not
10 be considered by this court. Additionally, in Ms. Reed's affidavit, page 2, lines 15-21,
11 those statements are completely irrelevant to these proceedings. These statements go
12 directly to the mental processes of the jury deliberations and are inadmissible. In fact, the
13 reason jurors are not told of potential sentences on offenses is for this very reason. Also,
14 the jury was individually polled by this court after the verdict and each juror responded in
15 the affirmative that these were their verdicts. Ms. Reed had to opportunity to address her
16 concerns at that time and did not do so. The defense cannot properly bring such
17 information to this court in support of their motion.

18 One cannot expect to put twelve people together to decide a person's fate and not
19 expect there to be human emotions and disagreements. In fact, that is why our jury
20 system works as it does - because jurors set forth their different opinions and then try to
21 reach a reasonable conclusion. However, that does not mean there is misconduct.

22 **1. A hearing, although within the discretion of the court, is neither proper nor**
23 **necessary in this case.**

24 A criminal defendant is not entitled to call jurors as witnesses in support of allegations of
25 jury misconduct as a matter of right. A trial court has discretion to conduct an evidentiary
26 hearing, at which jurors may testify, to determine the truth of such allegations. (*People v.*
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1 *Hedgecock* (1990) 51 Cal.3d 395, 415-416.) But to provoke the exercise of this discretion, the
2 defendant must first come forward with evidence demonstrating a “strong possibility” of
3 prejudicial misconduct. “The hearing should not be used as a ‘fishing expedition’ to search for
4 possible misconduct, but should be held only when the defense has come forward with evidence
5 demonstrating a strong possibility that prejudicial misconduct has occurred. Even upon such a
6 showing, an evidentiary hearing will be generally unnecessary unless the parties’ evidence
7 presents a material conflict that can only be resolved at such a hearing.” (*Id.* at p. 419; *People v.*
8 *Hayes* (1999) 21 Cal.4th 1211, 1255.)

9 An evidentiary hearing is not necessary when the testimony would relate primarily to the
10 content of jurors’ deliberations since such matters are barred by Evidence Code section 1150 and
11 could have a chilling effect upon the deliberation process. Finally, when it is necessary to call
12 jurors, the trial court has the authority to conduct most or all of their questioning. (*People v.*
13 *Hedgecock, supra*, 51 Cal.3d at p.418.)

14 In *People v. Cox* (1991) 53 Cal.3d 618, 697-701, the court voiced strong concerns about
15 calling jurors to testify. Deeming such action a “fishing expedition”, the court stressed the
16 danger of compelling juror testimony where the need for a hearing had not been established:

17 “To grant this kind of power to the losing attorney would open the door to
18 harassment of jurors and . . . ultimately damage the jury process and the
19 administration of justice.” [Citation.] In the civil context, we have also recognized
20 that “permitting counsel for the losing party to interrogate unwilling trial jurors
21 touches the integrity of our venerable jury process [O]nce aware that after
22 sitting through a lengthy trial he himself may be placed on trial, only the most
23 courageous prospective juror will not seek excuse from service.”

24 (*Id.* at p. 699.) The court also recognized the danger that holding evidentiary hearings when not
25 required would inhibit jurors in their deliberations. (*Id.* at pp. 699-700.)

26 In the present case, the defense has failed to bring forth evidence which demonstrates a
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1 strong possibility of *prejudicial* misconduct. Although the defense has presented affidavits from
2 a couple of jurors, there is nothing to indicate there was prejudicial misconduct by any of the
3 jurors.

4 First, as to juror Heissner “walking out” of deliberations, even if this were true, this does
5 not rise to the level of refusing to deliberate. By the affidavit of Ms. Reed, Ms. Johnson and Mr.
6 Vance, deliberations were concluded for the day and everyone reconvened the next morning as
7 usual. As stated in this affidavit, which the People have attached to this motion, Mr. Heissner
8 did NOT leave deliberations that day, but only felt frustrated and voiced that he should leave.
9 This was towards the end of the day and deliberations concluded soon after and everyone left for
10 the day. There is no way to stretch this into meaning that Mr. Heissner was refusing to deliberate
11 in any way and therefore there is absolutely no evidence of misconduct, let alone prejudicial
12 misconduct. This was simply part of jury deliberations when emotions run high and people have
13 differences of opinions that everyone must work through.

14 **B. THE FACTS DO NOT ESTABLISH MISCONDUCT**

15 The defense argues that here, certain jurors: 1) threatened to leave deliberations and did at
16 the end of one day; 2) asked if a dictionary could be brought into deliberations; 3) said, before
17 deliberations, that he “thought” that a guilty verdict would be a “no-brainer”; and 4) indicated he
18 conducted an on-line search regarding the meaning of great bodily injury.

19 It would appear that under Evidence Code Section 1150, misconduct occurs where
20 something is of such a nature that is it likely to have improperly influenced the jury verdict.
21 Under the facts in this case, there is nothing that supports the conclusion that any of the four
22 items above constitute misconduct.

23 First, a juror threatening to leave, or even walking out, when emotions are running high
24 simply cannot be construed as a juror refusing to deliberate. It may be frustration in not getting
25 one’s point across, it could be frustration with the way things are proceeding, or any other
26 number of things. We cannot automatically assume the juror was refusing to deliberate,
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1 especially since this occurred at the end of the day and Mr. Heissner returned the next morning,
2 apologized, and the group continued on with deliberations. To conclude otherwise is just a
3 stretch of the imagination.

4 Second, a juror simply asking if a dictionary would be proper in the jury room again is
5 not evidence of misconduct. By all accounts, the dictionary was not brought out or utilized
6 inside the jury deliberation room. The defense tries to put far too much weight into this minor
7 act. Once the juror was told he could not use it, he did not. There is no evidence to the contrary
8 on this point and therefore misconduct is not established.

9 Third, a juror's statement before deliberations can be misconduct, but does not rise to that
10 level in this case. To consider the statement is truly getting into the mental processes of that
11 particular juror. The only indication is by one juror that she heard this statement, yet other jurors
12 say they never heard such a statement. In fact, the jury verdicts in this case fly in the face of this
13 alleged statement since the jury, in fact, returned a number of not guilty verdicts. If this
14 statement were truly made AND improperly influenced either the juror who made the statement
15 or other jurors, then the jury would have come back with all guilty verdicts or with more counts
16 on which they were hung. Looking at the end result in this case illustrates clearly that there was
17 no misconduct even if this statement were made.

18 Finally, the on-line search of the meaning of great bodily injury by Mr. Arnold does not
19 constitute misconduct either. By the affidavits submitted by the defense, the only indication is
20 that Mr. Arnold simply tells jurors that he performed a search. But he also follows this up with
21 the statement that he failed to come up with any information. Although the defense attaches a
22 copy of an internet search (done by the defense), there is no evidence that this is what Mr. Arnold
23 did or that it is the information that he obtained. By all statements, Mr. Arnold indicated he
24 found no information and did not share any information with other jurors. It cannot be concluded
25 that this "search" resulted in misconduct as there is no evidence that such action influence the
26 verdict at all. In fact, the jury found the special allegations of great bodily injury as to two counts
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1 to be NOT TRUE.

2 For all these reasons, there were no acts of juror misconduct in this case under either the
3 Evidence Code or relevant case law.

4 **C. NO PREJUDICIAL MISCONDUCT EXISTS IN THIS CASE**

5 Although the People conclude that there was no misconduct in this case, we will finish
6 out the three-part process to further support our position.

7 The standard to be applied by the trial court was stated in *People v. Marshall* (1990) 50
8 Cal.3d 907, as follows:

9 A judgment adverse to a defendant in a criminal case must be reversed or vacated
10 “whenever . . . the court finds a substantial likelihood that the vote of one or more
11 jurors was influenced by exposure to prejudicial matter relating to the defendant
12 or to the case itself that was not part of the trial record on which the case was
submitted to the jury.” “The ultimate issue of influence on the juror is resolved by
reference to the substantial likelihood test, an objective standard.”

13 (*Id.* at pp.950-951; *People v. Holloway, supra*, 50 Cal.3d at p. 1109.)

14 A substantial likelihood of bias can be found in two ways. First, the extrajudicial
15 material, judged objectively, may be inherently and substantially likely to have influenced the
16 juror, in light of the entire record. Alternatively, the nature of the misconduct and its surrounding
17 circumstances may establish a substantial likelihood the juror was actually biased against the
18 defendant, even though the material was not inherently prejudicial. (*In re Carpenter, supra*, 9
19 Cal.4th at pp. 653-654.)

20 As stated in the above arguments, none of the four acts set forth by the defense can
21 support a finding that there was a substantial likelihood of bias that influenced any of the jurors.

22 For all of the reasons stated above, the defense motion for a new trial on grounds of juror
23 misconduct must fail as the defense has failed to set forth any sufficient evidence to support such
24 an argument.

25 **JUROR FREY-KEELER DID NOT WITHHOLD RELEVANT INFORMATION**

26 In its moving papers, the defense states that juror Frey-Keeler withheld relevant
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1 information that had the defense known about, they would have challenged her for cause or used
2 one of their peremptory challenges to remove her from the jury. The defense states the far-
3 reaching conclusion that because of Ms. Frey-Keeler's position she has specialized knowledge or
4 training regarding domestic violence. This is simply not true and is a reckless statement by the
5 defense. If the defense had simply looked further at Ms. Frey-Keeler's questionnaire (see pages 8
6 and 11), one would find that the knowledge that she has regarding domestic violence comes from
7 a family member being the victim of such abuse. The defense had this information at the time of
8 jury selection and may have even questioned Ms. Frey-Keeler on the subject.

9 In her affidavit which the People have attached to this response, Ms. Frey-Keeler again
10 indicates that she has no specialized training on domestic violence because of her job, but that
11 any knowledge she has comes from the family incident. Ms. Frey-Keeler did not mislead this
12 court or counsel in any way. This is simply an example of the defendant having "buyer's
13 remorse" after the fact of his conviction and looking for someone to blame, other than himself.
14 Additionally, the statements made by Ms. Frey-Keeler were made AFTER the jury verdicts in
15 this case and specifically, after the jury heard the testimony of Dr. Linda Barnard who
16 specifically testified that domestic violence reaches across all economic bounds and can happen
17 to anyone - rich, poor, smart, not so smart.

18 There is nothing in the record or otherwise to indicate any misconduct, let alone
19 prejudicial misconduct, on the part of Ms. Frey-Keeler. The People respectfully request that this
20 court deny the defense motion for a new trial on these grounds.

21 **THE TRIAL COURT DID NOT ERR ON ANY QUESTION OF LAW**

22 *A. THE TRIAL COURT PROPERLY EXCLUDE MARCEL MATLEY*

23 Pursuant to Penal Code section 1181, subsection (5), the appellate court may grant a
24 defendant's motion for a new trial after a verdict has been rendered when the trial "court
25 has...erred in the decision of any question of law arising during the course of the trial, and when
26 the district attorney...has been guilty of prejudicial misconduct during the trial thereof before a
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1 jury.” The authority to grant a new trial is permissive under the terms of this statute as evidenced
2 by the use of the word “may.”

3 In the present case, the trial court properly excluded a witness offered by the defense
4 under Evidence Code section 800. This witness, Marcel Matley, was offered as a handwriting
5 expert, specifically to give an expert opinion on whether particular writings by the victim were
6 made under duress or stress. After an extensive voir dire of the witness by both counsel and the
7 court, the court determined that the witness had expertise in handwriting examination. However,
8 the court noted that the witness had less experience in the “stress area.” (RT 369.) The court
9 also noted that the witness testified that he spends 80-90 percent of his time identifying the
10 particular writer of a document and has only had “very few cases” testifying as an expert on
11 whether stress has an influence on a document, specifically noting that the witnesses had
12 estimated three or four such cases. (RT 352-353.)

13 Based on all of these factors, although not specifically stated on the record, it is a
14 reasonable conclusion that the court found the witness did not qualify as an expert in the more
15 specific area offered by the defense, namely, whether a handwriting sample was written under
16 stress or duress. The court did note that the witness had “some expertise” in the area, but it did
17 not deem him as an expert qualified to testify as to the subject. As such, the witness would be
18 considered a “lay person” as to any opinion on that subject matter and would fall under Evidence
19 Code section 800. The trial court’s ruling on the admissibility of Mr. Matley’s testimony under
20 this Evidence Code section must not be disturbed unless there was an obvious and pronounced
21 abuse of discretion. (*People v. Clark* (1970) 6 Cal.App.3d 658, 664.)

22 Under Evidence Code section 800, a witness who is not testifying as an expert is
23 permitted to testify to his opinion, as permitted by law. However, the Evidence Code section
24 makes clear that this opinion must be (1) rationally related to the perception of the witness; and,
25 (2) helpful to a clear understanding of his testimony. (Evidence Code § 800.) In the present
26 case, the court focused on the second requirement contained in section 800 as it applied to Mr.
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1 Matley. The court noted that the documents examined by the witness were all created during a
2 time when the writer, Ms. Hamlin, was under stress and that there was no sample examined by
3 Mr. Matley that could be clearly identified as having been written when she was not under stress.
4 (RT 353.) Specifically, the court stated that Mr. Matley's testimony would be limited to
5 testifying that one sample was written under more stress or duress than the other. As such, the
6 court concluded that there was no real comparison in the samples offered, and thus, no real
7 validity to the witness' conclusions. (RT 345, 353-354.) The court allowed the defendant an
8 opportunity to re-direct Mr. Matley in an attempt to address the courts concerns. However, after
9 the re-examination of Mr. Matley by both the court and the defendant, the court was still not
10 satisfied that the witness could testify to anything that would provide the jury with assistance in
11 whether the samples analyzed by the witness were actually written under stress or duress.
12 Therefore, the court determined that the testimony would not assist the jury in the ultimate
13 resolution of the case and excluded his testimony. (RT 353, 355, 369-371.)

14 Furthermore, under an Evidence Code section 352 type analysis, the court found that the
15 testimony of Mr. Matley would not assist the jury. Under Evidence Code section 352, the court
16 may exclude evidence if the probative value of the evidence is substantially outweighed by the
17 probability that the admission of the evidence will be unduly prejudicial, cause undue delay,
18 confuse the issues, or mislead the jury. Additionally, in order to be admissible under Evidence
19 Code sections 352 and 350, the evidence must be relevant. That is, the evidence must tend
20 logically, naturally and by reasonable inference to prove a fact that is material to the case.
21 (Brokopp v. Ford Motor Co. (1977) 71 Cal.App.3d 841, 853.)

22 In the present case, the record reflects that the court performed this type of analysis,
23 although the court did not specifically state that it was doing so. The court examined whether the
24 testimony of Mr. Matley would assist the jury. As was discussed *supra*, the court determined
25 that the testimony of Mr. Matley would not assist the jury in reaching the ultimate resolution of
26 the case. (RT 352-356, 369-371.) Through this conclusion, the court essentially found that the
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1 testimony of Mr. Matley was not relevant as required by Evidence Code sections 350 and 352.
2 That is, that the testimony would not tend logically, naturally and by reasonable inference to
3 prove any material facts in the case and therefore could not assist the jury in reaching a verdict.
4 To introduce evidence that would not aid the jury in reaching a verdict on the counts charged in
5 the case would confuse and mislead the jury. By introducing evidence that does not assist the
6 jury in the ultimate resolution of the case, the jury may become preoccupied with tangential
7 issues and become confused as to what the issues of the case really are, or they may be mislead to
8 believe that the evidence goes to an material fact when it does not. By ruling to exclude the
9 testimony of Mr. Matley, the court was attempting to prevent the jury from being mislead or
10 confused by evidence that would not assist them in their ultimate resolution. Therefore,
11 performing the analysis required under Evidence Code section 352.

12 Finally, assuming without conceding, that the court improperly excluded the testimony of
13 Mr. Matley, the court's ruling would be subject to a harmless error analysis. Under the harmless
14 error standard, the court must examine whether the jury verdict was attributable to the error. The
15 standard does not consider whether there would have been a guilty verdict absent the error.
16 (*People v. Evans* (1998) 62 Cal.App.4th 186, 191-192, citing *Chapman v. California* (1967) 386
17 U.S. 18, 22-24.) In the present case, assuming without conceding that the trial court did err by
18 excluding Mr. Matley's testimony, the jury verdict against defendant can not be attributed to that
19 error. It is unlikely that the absence of testimony as to the varying degrees of stress Ms. Hamlin
20 was suffering while writing the three samples examined by Mr. Matley caused the jury to find
21 that defendant was guilty of torturing his wife. The record contains sufficient evidence to
22 support the jury's verdict. Therefore, it is unreasonable to conclude that the absence of Mr.
23 Matley's testimony resulted in the jury's finding of guilt.

24 In sum, the court did not err in excluding Mr. Matley's testimony. From the record it is
25 clear that the court did not abuse its discretion in ruling that Mr. Matley's testimony was
26 inadmissible under Evidence Code section 800. The record reflects that the court determined Mr.
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1 Matley had expertise in the field of handwriting analysis, but the court did not deem him an
2 expert qualified to testify about whether stress or duress could be found in the handwriting
3 sample. The court allowed the defendant ample opportunity to question the witness and show the
4 court Mr. Matley's qualifications and the court also questioned Mr. Matley itself. However, the
5 court was not satisfied that he was qualified as an expert. As such, Mr. Matley testimony would
6 be offered as a "lay witness" and the court properly considered the requirements of Evidence
7 Code section 800. After considering these requirements along with the offer as to what Mr.
8 Matley would testify to, the court determined that Mr. Matley's testimony would not aid the jury
9 in reaching the ultimate conclusion in this case. This careful consideration by the court clearly
10 demonstrates that the court did not abuse its discretion in excluding Mr. Matley's testimony.
11 Furthermore, the evidence was properly excluded after the court considered an Evidence Code
12 section 352 type analysis. Essentially, in conducting this analysis, the court concluded that the
13 testimony did not lend itself to a material fact in the case and therefore would not assist the jury
14 in reaching its ultimate conclusion. Finally, under a harmless error analysis, even if the court
15 finds that the trial court erred in excluding the testimony, such an error would be harmless. In
16 light of the other evidence contained in the record, the exclusion of the testimony as to the
17 varying degrees of stress potentially suffered by Ms. Hamlin when writing three samples
18 examined by Mr. Matley did not cause the verdict reached by the jury.

19 Therefore, the trial court did not err as to a question of law by excluding Mr. Matley's
20 testimony and the appellate court should not grant defendant's motion for a new trial.

21 B. THE COURT PROPERLY EXCLUDED MS. HAMLIN'S PRIOR CONDUCT

22 Evidence Code sections 787 and 788 set forth the manner under which specific instances
23 of conduct may be used to impeach a witness' credibility. The leading case of *People v. Castro*
24 (1985) 28 Cal.3d 301, set forth the idea that a crime must be one of moral turpitude to be used for
25 impeachment. Additionally, in enacting Proposition 8, voters have agreed that conduct involving
26 moral turpitude should be available for impeachment purposes. Subsequent case law supports
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1 this proposition, although courts retain unfettered discretion to exclude such evidence under
2 Evidence Code section 352. (*See eg. People v. Wheeler* (1992) 4 Cal.4th 284 [superseded on
3 other grounds]; *People v. Sapp* (2003) 31 Cal.4th 240.) In the case of a prior misdemeanor
4 conviction, evidence of the conviction itself is not relevant for impeachment only the underlying
5 misconduct can be used for impeachment purposes. However, the underlying conduct is only
6 admissible for impeachment if it involves “moral turpitude.” (*People v. Alvarez* (1996) 14
7 Cal.4th 155, 201 n. 11.)

8 Moral turpitude has been defined by the court as a “general readiness to do evil.” It has
9 been further clarified as “an act of baseness, vileness or depravity in the private and social duties
10 which man owes to his fellow men, or to society in general...” (*People v. Sanders* (1992) 10
11 Cal.App.4th 1268, 1272, citing *People v. Castro, supra*, 28 Cal.3d 301.) In *Sanders*, the court
12 held that a felony violation of Penal Code section 273a, subdivision (1) was not a crime of moral
13 turpitude and therefore, not available for purposes of impeaching a witness. (*Id.* at 1274.) The
14 court reasoned that it was not aware of any decision finding a crime to be “moral turpitude” when
15 it could be committed by passive conduct unaccompanied by criminal intent, such as with child
16 endangerment under Penal Code section 273a, subdivision (1). (*Ibid.*) The court noted that
17 section 273a, subdivision (1) can be violated “by wholly passive conduct, free from any element
18 of force, violence, threat, fraud, deceit, or stealth.” Based on this reasoning, the court concluded
19 that this was not a crime that denoted a general readiness to do evil. (*Id.* at 1274-1275.) In
20 contrast, the court in *Sanders* noted that a crime requiring an affirmative act and a specific mental
21 state, such as battery upon a police officer, would qualify as a crime of moral turpitude available
22 for use as impeachment evidence. (*Ibid.*)

23 In the present case, Ms. Hamlin had a prior 1999 citation for a violation of Penal Code
24 section 273a, subdivision (b), which was later dismissed by way of diversion. Much like in
25 *Sanders*, this Penal Code section can be violated by wholly passive conduct. Both sections of
26 273a, state that a defendant is guilty of violated that subsection if he or she “willfully causes or
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permits” certain conduct. As noted by the court in *Sanders*, this means that it is possible to violate the sections without any affirmative acts. The court there noted that there are no decisions making such passive conduct a crime of moral turpitude. In the present case, the court determined that the underlying conduct on Ms. Hamlin’s incident was passive conduct, as the court did in *Sanders*. Ms. Hamlin left her sleeping children on a day in March, inside a locked vehicle, strapped into their car seats, while she entered into a retail store. While not conduct that should be condoned, there was no evidence that she did an affirmative act with an intent to cause harm, as the court indicated would be necessary for a finding of moral turpitude. Therefore, this conduct was passive within the meaning of the *Sander’s* holding and is not a crime of moral turpitude that is admissible for purposes of impeachment. As such, the court was correct in its reasoning and did not err on a question of law.

Moreover, even assuming without conceding that the court acted improperly by excluding the evidence of Ms. Hamlin’s misdemeanor conduct, such error would be subject to a harmless error analysis. Under the harmless error standard, the court must examine whether the jury verdict was attributable to the error. The standard does not consider whether there would have been a guilty verdict absent the error. (*People v. Evans* (1998) 62 Cal.App.4th 186, 191-192, citing *Chapman v. California* (1967) 386 U.S. 18, 22-24.) In the present case, it is clear from the record that the jury verdict is not attributable to the court’s exclusion of this impeachment evidence. There is substantial evidence in the record that defendant was guilty of the crimes as charged, and that the verdict was not caused by the lack of impeachment of Ms. Hamlin with her 1999 conduct of leaving her children in the car. It is highly unlikely that the absence of this information caused the jury to render guilty verdicts.

The defendant disagrees and argues that Ms. Hamlin’s conduct was not passive in that she affirmatively drove to the store and affirmatively left the vehicle and her children inside. However, contrary to defendant’s arguments, these are not the type of affirmative acts intended by the court in defining affirmative conduct for purposes of establishing moral turpitude. The

1 acts that the court refers to are acts such as a use of force against another person. In addition, the
2 court requires some mental state, such as malice, in establishing moral turpitude. Contrary to
3 defendant's arguments, this affirmative conduct and mental state were not present during Ms.
4 Hamlin's conduct, just as in *Sanders*.

5 In sum, the court did not commit error by excluding Ms. Hamlin's 1999 misdemeanor
6 conduct from being used as impeachment evidence. As the court correctly determined that the
7 violation of 273a, subdivision (b) was passive and did not qualify as moral turpitude. Because
8 only moral turpitude crimes may be used to impeach a witness, the court was correct under the
9 law to exclude the use of this information. Moreover, had the court erred in excluding this
10 evidence, it would have been harmless error as it is highly unlikely that the absence of this
11 impeachment evidence caused the jury's verdict.

12 Therefore, the court did not err on a question of law as required under 1181, subdivision
13 (5) and the court should deny defendant's request for a new trial.

14 **SUFFICIENT EVIDENCE EXISTS IN THIS CASE TO SUPPORT THE**
15 **JURY VERDICTS AND THEREFORE A NEW TRIAL IS IMPROPER**

16 Penal Code Section 1181(6) indicates that a new trial may be granted "[w]hen the verdict
17 or finding is contrary to law or evidence". On appeal where the claim is one of insufficient
18 evidence, the standard of review is whether, after viewing all of the evidence in the light most
19 favorable to the prosecution, "any rational trier of fact could have found the essential elements of
20 the crime beyond a reasonable doubt." (*Jackson v. Virginia* (1979) 443 U.S. 307, 319, italics in
21 original; see also *People v. Young* (2005) 34 Cal.4th 1149, 1175). The People submit that the
22 same standard applies to this court in determining whether to a new trial is proper under Penal
23 Code Section 1181(6).

24 Under such standard, the defendant bears a "massive burden in claiming insufficient
25 evidence to sustain his conviction" because the court's role is limited. (*People v. Akins* (1997)
26 56 Cal.App.4th 331, 336.) When the sufficiency of the evidence is challenged, the reviewing
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1 court must ask whether the evidence, considered as a whole, was sufficient to permit a reasonable
2 trier of fact to conclude that the crime was committed as charged. (*People v. Rayford* (1994) 9
3 Cal.4th 1, 23; *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Ceja* (1993) 4 Cal.4th
4 1134, 1138.) In making this determination, the reviewing court must view the evidence in the
5 light most favorable to the prosecution and presume every fact in support of the judgment that
6 the jury could have reasonably deduced from the evidence. (*People v. Rayford, supra*, at p.23;
7 *People v. Ochoa, supra*, at p. 1206.). Although a court “must weigh the evidence and exercise
8 an independent judgment”, the “trial judge should not ignore the verdict and decide the case as if
9 there had been no jury,” (*People v. Lopez* (1969) 1 Cal.App.3d 78, 85, citing *People v. Robarge*
10 (1953) 41 Cal.2d 628.)

11 In the present case, taking the record as a whole, more than sufficient evidence exists to
12 support the jury verdict as to Count 1, as well all remaining counts. In the present case, the
13 offense of torture (Count 1) was committed over a long and continuous period of time.
14 Testimony received from the victim, as well as others, indicated that the defendant began the
15 process of alienating the victim from her family and friends approximately five years before the
16 offense (or around 1999-2000). The victim also indicated that the defendant slowly began his
17 physical abuse of her about the same period of time. Count 1 encompasses the dates from June
18 1, 2003 - February 28, 2004. As this court is aware from testimony it received during the jury
19 trial, the defendant physically, emotionally and mentally abused the victim during this period of
20 time on a daily basis. Additionally, the victim sustained major injuries in this case that easily
21 constitute great bodily injury within the meaning of the statute. Some of the injuries the victim
22 received during this time were: numerous bruises to almost every part of her body, a broken nose,
23 broken ribs, a cut finger, stab wounds to her scalp from a ball point pen, “cauliflower ears”, and
24 bleeding injuries. The victim testified that she still has pain to her rib area and Dr. Arnold
25 testified that the broken ribs he observed on the x-rays were of differing vintage, meaning they
26 appear to have occurred at different times (or could have been broken once, started to heal, and
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1 then were broke again). Additionally, in order to inflict the wide range of injuries, the defendant
2 utilized number of and different types of weapons, including: his fists, pieces of wood, piece of
3 pipe, a ball point pen, a sword, a taser and guns.

4 During his nine-month reign of daily torture, the defendant also emotionally and mentally
5 abused the victim with the purpose behind his crimes. As the court heard through testimony, the
6 defendant had moved his, allegedly lucrative, law practice into his home around December, 2002
7 or January, 2003. It was also during this time that the family had financial difficulties. It was
8 through the defendant's own selfish need for control and blatant disregard for his entire family
9 that he started building upon a memory the victim had shared a couple of years earlier. From that
10 one memory, the defendant sadistically created an elaborate fictitious story and forcibly
11 persuaded the victim to not only go along with the story, but also to remember and begin to
12 believe the story of molest in order to seek a large sum of money from his father-in-law. The
13 defendant forced this story upon the victim through multiple and almost daily episodes of
14 physical abuse, of which two such incidents were tape-recorded and played during the jury trial.
15 Those audio tapes showed the defendant's true state of mind as he beat the victim.

16 The defendant also utilized his children in accomplishing his mental and emotional abuse
17 against the victim. The defendant would tell the children that their mom (the victim) was crazy
18 and that he only hit her when her "demon personality" came out, he had his sons hold weapons to
19 their mother, and told the children repeatedly that their mother had molested them even though
20 none of them had any recollection of this occurring. There is absolutely no plausible reason to
21 use one's children in this regard and turn them against their mother.

22 However, there was not only the victim's testimony and that of the children that support
23 the jury verdicts in this case. A number of experts testified, including Dr. Linda Barnard whose
24 testimony fully corroborated the victim's testimony regarding her responses to the violence and
25 what the victim felt she had to do to endure and stay alive. Additionally, friends of the victim
26 testified about seeing injuries to her at different points in time and about what the victim told
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1 them regarding the abuse by the defendant. Even witnesses who did not know the victim closely
2 testified that they saw marks on her and expected physical abuse at home (for example, Pastor
3 Sharon Bollum).

4 The defense puts great weight into the idea that this court cannot consider the victim
5 suffering broken ribs and a broken nose as great bodily injury to support the jury verdict of Count
6 1, a violation of Penal Code Section 206. The defense makes this preposterous argument on the
7 reasoning that because the jury found the great bodily injury allegation to be not true on counts 9
8 and 17, there is nothing to support the GBI element of torture under Penal Code Section 206.
9 Nothing is more absurd or further from the truth.

10 When one looks carefully at the verdicts, it becomes clear why the jury returned these
11 verdicts. First, as stated before, Count 1 encompasses one continuous time frame between June
12 1, 2003 and February 28, 2004 and the victim testified that during that period she suffered almost
13 daily abuse at the hands of the defendant. Although the defense argues that Count 1 is only based
14 on the specific events enumerated in closing arguments on counts 5-18, that is not true. The
15 specific events referred to were simply major "highlights" if you will of the daily incidents
16 inflicted upon the victim. The People did not rely solely on those events to support the torture
17 charge, but rather the totality of the circumstances of the entire time frame alleged.

18 Additionally, Counts 9 and 17 are broken down into specific dates of abuse. Count 9
19 referred to Superbowl Sunday where the victim testified she was punched and thought her ribs
20 were broken. However, other evidence that the jury received was the victim's prior statement to
21 law enforcement where she thought the broken ribs may have been around mid-January. Also,
22 there was testimony from Clare that sometime late in 2002 she thought mom's ribs were broken
23 and her MDIC video indicates she told a teacher/counselor at her school during that same time
24 frame that mom's ribs were broken. Based on all the evidence the jury had to consider, it is
25 reasonable to conclude that it was impossible for them to find, beyond a reasonable doubt, that
26 the victim's ribs were broken specifically on Superbowl Sunday. Medical testimony from Dr.

1 Arnold actually supports this position as he testified that he was unable to tell exactly when the
2 ribs were originally broken. In order to make such a determination, the victim would have had to
3 seek immediate medical treatment, which the defendant would not allow her to do. Based on
4 this, it appears that finding that the victim's ribs were definitely broken in the time frame
5 encompassing the torture count was easier than determining an actual date on which the ribs were
6 definitely broken.

7 The same argument rings true on Count 17 where the victim testified she thought her
8 nose was broken during an incident in the laundry room of the house. The victim also testified
9 that when she was being beaten in the van on the way to Roseville, she also felt pain to her nose
10 after being hit with the "butt" of the defendant's gun. Again, since the defendant did not allow
11 the victim to immediately seek medical treatment, it is impossible for Dr. Arnold to say exactly
12 when the victim's nose was broken, only that it was and was still in the healing stage. This leads
13 to the same conclusion as above, that it was difficult for the jury to specifically find bones were
14 broken on a certain date - especially when medical professionals were unable to do so. Instead,
15 the jury could easily conclude from the overwhelming evidence, as they obviously did, that the
16 victim suffered broken bones in conjunction with the torture charge over a wide time frame.

17 Based on the totality of the evidence in this case, there is overwhelming evidence to
18 support the jury verdict in Count 1, a violation of Penal Code section 206. Based on such
19 conclusion, the defense motion for a new trial on insufficiency of the evidence grounds, must
20 fail.

1 **CONCLUSION**

2 Based on the foregoing argument, the People respectfully request that this court deny the
3 defense motion for a new trial and find that the jury verdicts were supported by sufficient
4 evidence presented at the jury trial.

5 Date: July 12, 2006

6 Respectfully submitted,

7 GARY L. LACY
8 DISTRICT ATTORNEY

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10 VICKI L. ASHWORTH
11 Deputy District Attorney
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1 GARY L. LACY
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3 Placerville, California 95667
Telephone: (530)621-6472
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5 Attorneys for Plaintiff
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7 IN THE EL DORADO COUNTY SUPERIOR COURT
8 STATE OF CALIFORNIA

9 THE PEOPLE OF THE STATE
10 OF CALIFORNIA,
11 Plaintiff,

CASE NO. P05CRF0161

DECLARATION OF JULIANNE
FREY-KEELER

12 v.

13 RICHARD HAMLIN,
14 Defendant
15

16 I, JULIANNE FREY-KEELER, declare as follows:

- 17 1. I was a juror in the above-entitled case.
18 2. During jury deliberations in this case, juror Robert Heissner became frustrated and
19 threatened to walk out of the jury deliberations.
20 3. When juror Robert Heissner came back to deliberations the next day, he apologized to the
21 jury panel.
22 4. I have no recollection of any extraneous materials being brought into the jury room.
23 5. I did not hear any juror make a statement regarding the defendant's guilty or innocence
24 prior to deliberations.
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1 6. I work as an "admitting float" at the hospital. My duties require that I admit patients who
2 come into the emergency room or those who are being admitted for regularly scheduled
3 surgeries or treatment.

4 7. Any time spent with a patient, particularly in the emergency room, is relatively brief and
5 is limited to personal information for accurate record-keeping.

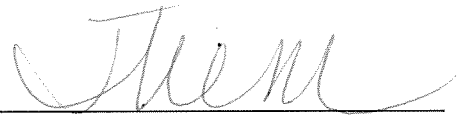
6 8. I do not have specialized training in domestic violence due to my job.

7 9. I do not belong to, nor did I at the time of this trial, to any organizations or groups related
8 to domestic violence.

9 10. As indicated in my questionnaire, any information I have relating to domestic violence
10 comes from a family member who was being abused in the recent past.

11
12 I declare under penalty of perjury that the foregoing is true and correct .

13
14 Executed on July 12, 2006 at Placerville, California.

15
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17 JULIANNE FREY-KEELER
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1 GARY L. LACY
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5 Attorneys for Plaintiff
6

7 IN THE EL DORADO COUNTY SUPERIOR COURT
8 STATE OF CALIFORNIA

9 THE PEOPLE OF THE STATE
10 OF CALIFORNIA,
11 Plaintiff,

12 v.

13 RICHARD HAMLIN,
14 Defendant
15

CASE NO. P05CRF0161

DECLARATION OF ROBERT
HEISSNER

16 I, ROBERT HEISSNER, declare as follows:

- 17 1. I was a juror in the above-entitled case.
18 2. No jurors refused to deliberate in this matter.
19 3. About three days into deliberations, I was frustrated, suggested we end deliberations at
20 about 4:00 p.m. The foreperson indicated we would continue until 4:30 p.m. and at that
21 time we concluded the deliberations for the day.
22 4. When I returned to deliberations the next morning, I apologized to the other members of
23 the jury for showing any frustration.
24 5. At no time did I leave the jury deliberation room before deliberations were concluded for
25 the day.
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1 6. At the beginning of deliberations I asked a bailiff if it would be appropriate to have a
2 dictionary in the jury room. I was told it would not be appropriate and the dictionary was
3 never used.

4 7. I do not recall any jury members making any statements regarding guilt or innocence
5 prior to jury deliberations.
6

7 I declare under penalty of perjury that the foregoing is true and correct.
8

9 Executed on July 12, 2006 in Placerville, California.
10

11 

12 ROBERT HEISSNER
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7 Attorneys for Plaintiff

EL DORADO CO. SUPERIOR CT.
FILED *July 13, 2006*
BY *[Signature]* 4:55pm
Deputy

8 IN THE EL DORADO COUNTY SUPERIOR COURT
9 STATE OF CALIFORNIA

10 THE PEOPLE OF THE STATE
11 OF CALIFORNIA,

12 Plaintiff,

13 v.

14 RICHARD HAMLIN,

15 Defendant

CASE NO. P05CRF0161

PEOPLE'S RESPONSE TO
DEFENSE MOTION TO DISMISS
PURSUANT TO PENAL CODE
SECTION 1385

Hearing: August 14, 2006

Time: 1:30 p.m.

Department: 2

16 To RICHARD HAMLIN and his co-counsel of record, ROBERT BANNING, the People hereby
17 oppose the Defense Motion to Dismiss Count 1 pursuant too Penal Code Section 1385. Such
18 motion is based on the following points and authorities, any and all pleadings, transcripts, trial
19 testimony received in this case, and any further oral motion as may be presented at the above-
20 mentioned hearing in this matter.

21 I.

22 STATEMENT OF FACTS

23 As this court presided over the entire jury trial, including deliberations, the People hereby
24 request that the court take judicial notice of all the evidence presented to it as our Statement of
25 Facts and incorporate by reference herein. The People note that a transcript has been prepared as
26 to a significant portion of all trial testimony in this case.

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II.

**UNDER PENAL CODE SECTION 1385, DEFENDANT'S
MOTION FOR A DISMISSAL OF COUNT 1 IS IMPROPER**

Under Penal Code section 1385, the court may, either upon its own motion or by motion of the prosecuting attorney, order that an action be dismissed in the interest of justice. Such an order for dismissal must be set forth in the minutes of the proceeding and shall not be made on any grounds upon which a demurrer to the accusatory pleading could be made. (Penal Code § 1385.) However, Penal Code section 1385 contains no provisions for a defendant to bring a motion to dismiss. At most, a defendant may informally suggest that the court consider a dismissal, but a defendant may not bring a formal motion. (*People v. Andrade* (1978) 86 Cal.App.3d 963, 974; *People v. Ritchie* (1971) 17 Cal.App.3d 1098, 1104.) The legislature specifically limited the authority to bring such a motion to the court and to the prosecution. Allowing a defendant to bring a motion to dismiss in the interest of justice under section 1385 would judicially enlarge the scope of that section. (*People v. Andrade, supra*, 86 Cal.App.3d at p. 974.)

In the present case, defendant improperly has brought a formal motion to dismiss in the interest of justice pursuant to Penal Code section 1385 and has argued that the court exercise its own discretion to dismiss the case. Under the statute this is simply not allowed. The statute specifically states that a court may dismiss on its own motion or upon the motion of the prosecution. It makes no mention of a motion by defendant. In fact, case law has established that it was the legislative intent not to extend the authority to bring such a motion to defendants. Allowing defendant to bring this motion would judicially extend the statute's scope beyond the legislative intent. The defense is unable to argue that it is merely 'suggesting' that this court act within its discretion under Penal Code section 1385. In his motion, the defendant very forcefully argues why this Court should dismiss Count 1 under section 1385 and actually goes so far as to state that this particular case and set of facts "calls out for and demands such a finding by this

1 Court.” (Defense Motion to Set Aside the Verdict at p.18, lines 8-9.) As stated above and set
2 forth in case law, such an argument to this court is completely out of line and outside the scope
3 of what is deemed appropriate and allowed under Penal Code Section 1385. Therefore, because
4 defendant’s motion is improper under the statutory authority in Penal Code section 1385, the
5 court should deny defendant’s motion to dismiss.

6 However, even considering the merits of the motion to dismiss pursuant to Penal Code
7 section 1385, the court should deny defendant’s motion. In order to dismiss on its own motion
8 under the statute, the court must consider and weigh the defendant’s constitutional rights, as well
9 as the interests of society as represented by the People. (*People v. Carter* (1996) 49 Cal.App.4th
10 567, 573.) Should the court exercise its discretion to dismiss, it must be based on a reason that
11 would “motivate a reasonable judge.” (*Ibid.*) The specific factors to be balanced by the court
12 are: evidence indicative of guilt or innocence; the nature of the crime; defendant’s incarceration
13 before trial and the length of it; burden or harassment of a retrial on defendant; and, the
14 likelihood of new evidence being presented at a retrial. (*People v. Fretwell* (1970) 8 Cal.App.3d
15 Supp. 37, 40-41.) The “in furtherance of justice” objective requires that the rights of the
16 defendant and people be considered, and any dismissal that cuts into those rights, without a
17 showing of detriment to the defendant, would be an abuse of discretion. (*Ibid.*)

18 In this case, there is absolutely no reason that would “motivate a reasonable judge” to
19 dismiss Count 1, a violation of Penal Code Section 206 (*People v. Carter, supra* at p.573.). In
20 looking at the factors referred to in *Fretwell, supra*, it is clear that a dismissal is simply not
21 supported nor warranted. A review of the factors set forth in *Fretwell* follows:

- 22 1. Evidence Showing Guilt or Innocence/Nature of the Crime: Testimony received
23 during the three-month long trial is overwhelmingly indicative of the defendant’s
24 guilt on Count 1. Not only did the victim testify regarding the on-going torture,
25 but the victim’s children, family and friends also testified about how the
26 defendant tortured and abused his wife. Additionally, there were two audio tapes
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1 that captured the defendant beating the victim and was circumstantial, if not
2 direct, evidence of the defendant's state of mind that he was beating her with the
3 intent to cause cruel or extreme pain and suffering. Additionally, it was well-
4 established by the People that the purpose behind the defendant's actions was to
5 get his victim to go along with an alternate reality that the defendant created in
6 order to harass and sue his father-in-law for a large amount of money. As the
7 evidence showed, the defendant committed the heinous acts against the victim for
8 extortion, persuasion and other sadistic purpose as required under Penal Code
9 Section 206. There was also medical evidence and DNA evidence received that
10 supported and corroborated the victim's testimony regarding acts of abuse. Also
11 of significance is the length of time over which the defendant abused the victim as
12 it lasted for over nine months. This was not simply a one-time incident, but rather
13 a continuous period of abuse.

14 2. Incarceration of the defendant before trial: The defendant has been in-custody
15 since his arrest in this case on February 28, 2004. Although lengthy, such
16 incarceration was necessary to provide safety to the victims and other witnesses in
17 this case.

18 3. Likelihood of new evidence at a retrial: Although there is evidence in this case
19 that was not presented to the jury, it is unlikely that such evidence would be
20 admissible in a retrial of the defendant.

21 As stated above, there is nothing in the record that would support a dismissal of Count 1 in this
22 case.

23 **A. The record contains sufficient evidence to support the jury verdict(s)**

24 In reviewing a claim of insufficient evidence, the court must examine the record in its
25 entirety and consider the evidence in a light most favorable to the prevailing party. The court
26 must determine whether any reasonable trier of fact, presented with the evidence contained in the
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1 record, could have reached the conclusion that it did. (*People v. Zavala* (2005) 130 Cal.App.4th
2 758, 766.) In essence, the court must find that there is substantial evidence in support of the trier
3 of fact's findings. The testimony of a single witness is sufficient to constitute substantial
4 evidence in support of a jury's finding. (*People v. Zavala, supra*, at p. 766; *People v. Vega*
5 (2005) 130 Cal.App.4th 183, 189-190.)

6 As stated in the above argument, sufficient evidence was presented during the trial to
7 support the jury's verdict of guilty as to Count 1 (Penal Code §206). Additionally, the defendant
8 makes this exact same argument in his "Motion for New Trial" at pp.35-43. The People
9 adequately respond to this defense position in our "Response to Defense Motion for New Trial"
10 at pp. 19-23 and would refer the Court to that particular motion for the full argument and
11 incorporate such argument by reference herein. It is not an effective use of judicial time for the
12 People to reiterate such argument here.

13 **B. The Legislature intended to punish defendants such as Mr. Hamlin**

14 The defense argues that, in enacting Penal Code Section 206, the Legislature never
15 intended to prohibit acts such as those committed by the defendant in this case. A review of case
16 law in California shows that nothing could be further from the truth. The downfall in
17 defendant's argument is that he continually focuses on the injuries (or as he argues, the lack
18 thereof) to the victim. In comparing Ms. Hamlin's injuries to other victims of torture, the
19 defense readily concludes that Ms. Hamlin's *physical* injuries do not appear to be as severe as in
20 other torture cases. On this point, the defense argument must fail.

21 First, in enacting Penal Code Section 206, the Legislature obviously intended to punish a
22 wide range of acts that could constitute pain and suffering. This statement is supported by the
23 language contained in Penal Code Section 206 which says: "The crime of torture does not require
24 any proof that the victim suffered pain." This seems to indicate that, as long as great bodily
25 injury is inflicted, wholly passive conduct such as failing to provide food or water to a victim, is
26 sufficient to support a conviction for torture.

1 Second, in case after case on appeal regarding a conviction for torture, the courts indicate
2 that the main consideration is NOT injury to the victim, but rather the state of mind of the
3 perpetrator. It is the perpetrator's state of mind that makes this crime so different from other
4 crimes. (See *People v. Barrera* (1999), 14 Cal.App.4th 1555; *People v. Pre* (2004), 117
5 Cal.App.4th 413; *People v. Jung* (1999) 71 Cal.App.4th 1036; and *People v. Hale* (1999) 75
6 Cal.App.4th 94). Specifically contrary to the defense argument, the court in *People v. Jung* states
7 "[t]hat other victims of torture may have suffered more than the victim in this case sheds no light
8 on the sufficiency of the evidence of defendants' intent to cause [the victim] severe pain and
9 suffering." (*Id.* at p.1043.). Also, in *People v. Hale, supra*, the court stated that "[the defendant]
10 misses the critical point that torture as defined in section 206 focuses on the mental state of the
11 perpetrator and not the actual pain inflicted." (*Id.* at p. 108, citing *People v. Jung, supra* at
12 pp.1042-1043.) Finally, as so succinctly stated in the case of *Barrera*, the defendant's brief
13 "continually attempts to minimize the offense, labeling it merely . . ." a case of domestic
14 violence, " . . . but under these facts his conduct was manifestly more than that. His actions were
15 cold-blooded, calculated, motivated by financial gain, and resulted in a great cost to his victim."
16 (*Id.* at p. 1567.). This is exactly what the evidence in the present case proved beyond a
17 reasonable doubt - that the acts committed by the defendant coupled with his state of mind is
18 sufficient to warrant the guilty verdicts returned by the jury in this case.

19 **C. Defendant's background does not constitute "interest of justice" in this case**

20 Once again, it must be pointed out that the defense's repeated requests, via formal
21 motion, for a dismissal under Penal Code Section 1385 is entirely improper and the People
22 request that this Court not even consider the motion on those grounds as there is no legal basis to
23 bring it.

24 Although the defendant sets forth his personal background that shows no prior
25 convictions, an adequate legal career, and somewhat mediocre childhood, there is nothing
26 contained in those seven pages that would constitute an "interest of justice" reasoning to dismiss
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Count 1 in this case. If anything, the defendant's background indicates that he should have known how damaging conduct such as his can be on family members. Instead of recognizing the harm he was inflicting on his family, the defendant chose to continue with his criminal acts and should be punished in accordance with the choices he made. In fact, to dismiss Count 1 under Penal Code Section 1385 would be to further victimize not only Susan Hamlin, but the children as well. Upholding the verdicts and refusing to act under section 1385 is necessary to the protection of the public (see *People v. Andrade* (1978) 86 Cal.App.3d 963.) as well as to the victim(s). If ever a case supported upholding the jury's verdicts of guilty, it would be this case.

III.

A LIFE SENTENCE IS THE ONLY APPROPRIATE SENTENCE

The defense relies upon *People v. Superior Court (Himmelsbach)* (1986) 186 Cal.App.3d 524 (disapproved in *People v. Norrell* (1996) 13 Cal.4th 1; superseded by statute as discussed in *People v. Kramer* (2002) 29 Cal.4th 720) to ask this court to sentence the defendant to something less than a life sentence.

As discussed above and in other relevant motions, there simply is no legitimate reason to give the defendant a lesser sentence in this case. The evidence more than supports the guilty verdicts returned by the jury and a lengthy sentence is needed to punish the defendant adequately for the horrendous and repeated acts he committed against the victim. Nothing more supports this conclusion than the defendant's motion itself. In the motion, once again, the defendant focuses in on the effects his actions have had on him and his life (loss of his bar license, loss of his home, etc.). The defendant fails to even consider, let alone recognize, that his actions have had horrible effects on the victim and their children. The victim must live with the memories of not only the on-going physical abuse, but the extreme mental abuse the defendant inflicted upon her. Additionally, their children will continue to suffer mentally from all they have heard, seen and in which they were forced to participate.

In this case, under these facts, the only appropriate sentence is that which is required

1 under Penal Code Section 206.1 which is life imprisonment for defendant's conviction of torture.

2 **IV.**

3 **CONCLUSION**

4 For the foregoing reasons, the defendant's motion to dismiss pursuant to Penal Code
5 Section 1385 must fail because: 1) is it wholly improper for the defense to even bring such a
6 motion and request that this Court act under section 1385; 2) sufficient evidence exists to support
7 the guilty verdicts here; and 3) the conduct and state of mind in this case are exactly what the
8 Legislature sought to punish/prohibit. Additionally, the People respectfully request that this
9 Court impose a life sentence pursuant to Penal Code Section 206.1 as the only just punishment in
10 this case.

11
12 Dated: July 12, 2006

Respectfully Submitted,

13 GARY L. LACY
14 DISTRICT ATTORNEY

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16 VICKI L. ASHWORTH
17 Deputy District Attorney
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO
495 Main Street
Placerville, CA 95667

People of the State of California
VS.
RICHARD WILLIAM HAMLIN

Case No: P04CRF0132

MINUTE ORDER

=====

Motion RE: TO CONTINUE J&S AND MOTIONS

Date: 06/19/06 Time: 8:40 am Dept/Div: 2

=====

Charges: 1) 206 PC-F C, 2) 273A(B) PC-M C, 3) 273A(B) PC-M C, 4) 273A(B)
5) 245(A)(1) PC-F A, 6) 422 PC-F C, 7) 273.5(A) PC-F Q
--- MORE CHARGES for this Case/defendant ---

Honorable Judge EDDIE T. KELLER presiding
Clerk: Dahlgren S.
Court Reporter DeLacy K.
Bailiff K. BROWN

Deputy District Attorney V. ASHWORTH present.
Defendant present
Defendant proceeds in Propria Persona.
Public Defender R. Banning also present as
co-counsel.

Oral motion on behalf of the People regarding continue the
06-23-06 J&S Hearing.
Due to additional motions filed by Defense.
No objection by the Defense to continue.
Motion is GRANTED.

COURT ORDERS:
MX hearing set for 06/23/2006 at 13:30 is ordered vacated.

Time is Waived.
Motion RE: VARIOUS set for 08/14/2006 at 13:30 in Department 2.
JUDGMENT and SENTENCING set for 08/14/2006 at 13:30 in Dept. 2

COURT ORDERS:
The People's reply brief is due by 07-13-06 and
Defense has until 08-04-06 to file a response.

CUSTODY STATUS
Remains remanded to the custody of the Sheriff.
Bail to remain as previously set.

cc: D A / PUB DEF / JAIL - TRANSPORTATION
RICHARD HAMLIN C/O JAIL

=====MINUTE ORDER END=====

Dispo

1 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO**

FILED
06 JUN 16 AM 8:38

ELDORADO COUNTY
SUPERIOR COURT

BY AC DEPUTY

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5 **THE PEOPLE OF THE STATE OF CALIFORNIA**)

6 **Plaintiff,**)

7 vs.)

8 **RICHARD WILLIAM HAMLIN,**)

9 **Defendant.**)

NO: P04CRF-0132

HEARING DATE: 6-23-06

TIME: 1:30 p.m.

DEPT: 2

10
11 **Probation Officer's Report and Recommendation**

12 **DATE OF OFFENSE:** June 1, 2003 through February 28, 2004

13 **INDICTMENT FILED:** April 15, 2005

VERDICT: January 10, 2006

14 **DISPOSITION OF CHARGES:**

15 The defendant was found Guilty by Jury Verdict of **COUNT I:** 206 P.C., **TORTURE**, a felony;
16 **COUNT II, III, and IV:** The lesser included offense 273a(b) P.C., **CRUELTY TO A CHILD BY**
17 **CAUSING UNJUSTIFIABLE MENTAL SUFFERING**, misdemeanors; **COUNT VI:** 422 P.C.,
18 **CRIMINAL THREATS**, a felony; **COUNT IX and XVII:** 273.5(a) P.C., **CORPORAL INJURY TO**
19 **SPOUSE**, all felonies, with the Jury finding the defendant **Did Not** inflict great bodily injury within the
20 meaning of 12022.7(e) P.C.; **COUNT XIII:** 273.5(a) P.C., **CORPORAL INJURY TO SPOUSE**, a
21 felony (12022.7(e) P.C. enhancement was not alleged)

(Continued on Page 2)

22 **ATTORNEY:** Public Defender

☒ **IN PRO PER**

23 **CUSTODY STATUS:** In Custody

24 **Facility**
El Dorado County Jail

From
2-28-04

To
6-23-06

Days Served
847

25
26 **TOTAL ACTUAL CONFINEMENT TIME:**

847 DAYS

27 3/13
28

1 **DISPOSITION OF CHARGES, Continued:**

2 The defendant was found Not Guilty by Jury Verdict of **COUNT VII**: 273.5(a) P.C.
3 **CORPORAL INJURY TO SPOUSE; COUNT VIII and XII**: 236 P.C., **FALSE IMPRISONMENT**
4 **BY VIOLENCE; COUNT X and XVIII**: 245(a)(1) P.C., **ASSAULT WITH A DEADLY WEAPON,**
5 **BY MEANS LIKELY TO PRODUCE GBI; COUNT XI**: 422 P.C., **CRIMINAL THREATS;**
6 **COUNT XVI**: 246.3 P.C., **DISCHARGE OF FIREARM WITH GROSS NEGLIGENCE**, all
7 felonies.

8 The following charges were submitted for dismissal as a result of the Jury being deadlocked:
9 **COUNTS V and XIV**: 245(a)(1) P.C., **ASSAULT WITH A DEADLY WEAPON, BY MEANS**
10 **LIKELY TO PRODUCE GBI; and COUNT XV**: 422 P.C., **CRIMINAL THREATS**, all felonies.
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1 **IDENTIFICATION:**

2 CII#: H08090085 FBI#: 856802DC2 DL#: N7499381 ☐ Suspended ☐ Revoked
3 SOC.SEC.#: 553-43-9909 AGE: 45 DOB: 4-15-60 PHONE: (916) 939-1587

4 RESIDENCE ADDRESS: 3340 Beatty Drive
5 El Dorado Hills, CA ZIP: 95762

6 **PERSONAL DATA:**

7 HIGHEST GRADE COMPLETED: 16 DEGREE: Juris Doctor (J.D.)

8 MARITAL STATUS: Divorced

9 NUMBER OF CHILDREN SUPPORTED: 4

10 EMPLOYER: Self-Employed

11 INCOME: No income for past two (2) years HOW LONG: 1990-2004

12 **PRESENT OFFENSE:**

13 The following was summarized from El Dorado County Sheriff's report number EG0402413.
14 On February 26, 2004, the defendant, Richard Hamlin, and his wife and victim, Susan Hamlin went to
15 the El Dorado County Sheriff's Office to report acts of child molestation by Mrs. Hamlin, and report a
16 satanic plot to murder Mr. Hamlin. During the disclosure by Mrs. Hamlin, the detectives interviewing
17 her became concerned, as the defendant appeared to be controlling the content of his wife's statement.
18 The detectives were also concerned about serious bruising on Mrs. Hamlin's head and face. Mrs.
19 Hamlin reported she had received injuries and bruising over her entire body from an assault that had
20 taken place four (4) days ago. Susan claimed she was assaulted by Rock Clum, the husband of her friend
21 Lisa Clum, and that the Clums were involved in the plot to kill her husband. During the interview,
22 detectives requested Child Protective Services (CPS) take the four (4) Hamlin children into protective
23 custody due to the allegations by Mr. and Mrs. Hamlin. As a result of the criminal admissions by his
24 wife, Mr. Hamlin asked the detectives to immediately arrest his wife. However, the detectives believed
25 that further investigation was necessary before an arrest could be made.

26 On February 27, 2004, a Multidisciplinary Review Team interviewed three (3) of the four (4)
27 Hamlin children, Alec H., Clare H. and Jennifer H. All three (3) children reported they had no memory
28 of their mother molesting them; however, their father (the defendant) informed them their mother had

1 molested them all. During the interview, the Hamlin children revealed several previous incidents of
2 domestic violence in which they had witnessed their father (the defendant), physically harm their mother,
3 Susan Hamlin. Detectives also learned one (1) of the children had disclosed incidents of abuse to school
4 personnel. The youngest daughter, Jennifer, described an incident in February of 2004 where her father
5 pushed her mother against a wall and was yelling and hitting her mother so much that the pictures on the
6 wall were shaking. She further described her mother had received a bloody nose, black eyes, and a
7 swollen mouth and cheek from that incident.

8 After the interview with the children, detectives located and spoke with Rock and Lisa Clum.
9 The Clums related Susan had recently confided to them that the defendant had been physically abusive
10 toward her. Mrs. Clum advised detectives she had taken Susan Hamlin to the Women's Center for
11 counseling; however, Mrs. Hamlin told counselors at the W.E.A.V.E. center that although she was
12 frightened of her husband, she was more afraid to leave him.

13 On February 28, 2004, the detectives began to prepare a warrant for the defendant's arrest for
14 domestic violence, as they were concerned Mrs. Hamlin may be in additional danger of being harmed.
15 Mr. Hamlin was located before the warrant was completed and was taken into custody, and adamantly
16 denied any allegations of abuse. During the initial interview Mr. Hamlin stated he learned his wife had
17 been molested by her father and engaged in satanic rituals and prostitution as a child. He stated his wife
18 was plotting with Lisa and Rock Clum to have him "whacked" so she could take the children to be part
19 of a satanic church group. He claimed the Clums were affiliated with Susan's father, Sid Siemer, who
20 had connections to a satanic church in Fresno, California. Hamlin related the satanic church had offered
21 her a high priestess position if she allowed her husband to be killed. He stated he was considered by the
22 satanic cult to be a "Christian on a mission who must be eliminated before his mission can be ignited."

23 On February 28, 2004, and March 1, 2004, detectives interviewed Mrs. Hamlin, who was still
24 extremely frightened for her own safety. Mrs. Hamlin described an extremely abusive and controlling
25 relationship where, over several months, the defendant had threatened and beaten her until she would
26 "tell him the right things" or do what he demanded of her. She stated the report given on February 26,
27 2004, was fictitious and had been "rehearsed". Susan related the defendant had forced her to report the
28 fictitious allegations and she was so frightened of her husband that she hoped she would be arrested so

1 she could feel safe. Mrs. Hamlin further stated that her husband would punch and threaten her until she
2 admitted that she molested her children, so that there would be more credibility to the defendant's story
3 in a civil lawsuit he was planning to file against her father. Susan denied involvement in any satanic or
4 ritualistic activity. She also denied her father had molested her. She further denied there was ever any
5 plan or plot to kill the defendant. Susan stated approximately one (1) year prior, the defendant began
6 reading letters belonging to her from her past. The defendant began to believe there were "cryptic
7 messages" and a "secret code" in the letters. He told Susan the messages were meant to expose her
8 history of physical and sexual abuse as a child.

9 During the interview with Mrs. Hamlin, detectives noted she had serious bruising on her eye and
10 jawbone. Her nose and ears were swollen and discolored. Additionally, deputies photographed several
11 bruises about her body (both arms, both legs, ribs, back, chest, and stomach) in various stages of aging.
12 In another incident, Susan related she was taken into the garage of their home where the defendant
13 slapped and punched her so hard her nose began to bleed and she was "seeing white." She related she
14 received injuries and bruises all over her body at that time. She was then forced into the laundry room to
15 iron the defendant's shirts. She had stuffed tissue up her nose to stop the bleeding, but when some of her
16 blood dripped onto his shirt, he threw her against the wall and began hitting her some more. The children
17 were in the living room on the other side of the wall during this incident. At one point in the interview
18 Mrs. Hamlin stated her husband was becoming concerned that it was more difficult to hide her injuries,
19 so he began hitting her where the bruising would not be so obvious. According to Susan, he also used a
20 pen to stab her scalp where her hair would hide the injuries. Susan also stated that on February 11, 2004,
21 the defendant took her and their boys, Alec H. and Ryan H. in a van to Roseville, California, in attempt
22 to locate the Clums. Susan did not know the Clum's address and was unable to locate their home for the
23 defendant. As a result of the defendant believing she was lying to him, Susan said he pistol-whipped her
24 and punched her in the shoulder, face, and side, despite her pleas for him to stop.

25 Although many people told her to leave her husband, Susan was afraid that if she did, he would
26 kill her. Additionally, Mrs. Hamlin admitted her husband threatened to kill her, if she ever reported the
27 abuse. After the interview, detectives took Mrs. Hamlin to Marshall Hospital for a battery examination.
28 Several injuries were documented and reported, including a broken nose and ribs. On March 8, 2004, a

1 Forensic Nurse Examiner summarized her findings, stating, "The multiple fractures and extensive
2 bruises of various ages are consistent with Susan's history and timeframe for severe, acute and chronic
3 physical assault."

4 Detectives conducted separate second interviews with the Hamlins' two (2) sons, Alec and Ryan,
5 on March 2, 2004. Both boys independently corroborated their mother's statements of abuse. They
6 spoke of an incident where their father (the defendant) took them to Roseville with their mother to find
7 and kill Lisa Clum. During the ride to Roseville, they stated they witnessed their father punching their
8 mother in the face with a closed fist. They had been instructed by their father to bring their paintball
9 guns with them, which had been loaded with frozen paint balls. At one point in the evening, their father
10 left the van and instructed the boys to guard their mother with their weapons and not let her move. Later
11 in the evening, their father took their mother to a field while pointing a gun at her head. Both boys put
12 on hearing protectors at that time because they believed their father was going to shoot their mother.
13 Alec described incidents where his father would punch his mother "very hard" because she "wasn't
14 saying the right things." He observed his mother get punched in the stomach, ribs, arms, legs, and head.
15 Ryan recalled similar beatings of his mother and stated that it had become "commonplace." Both boys
16 corroborated the incident that started in the garage and continued in the laundry room. In separate
17 interviews, detectives asked the boys if they could estimate out of seven (7) days in a week, how many
18 days would their father beat their mother; both Ryan and Alec independently answered, "five days."

19
20 **DEFENDANT'S STATEMENT:**

21 The defendant declined to make a statement based on the advice of his counsel.

22
23 **VICTIM'S STATEMENT:** ☐ \$ _____ RESTITUTION ☒ TO BE DETERMINED

24 The Probation Officer interviewed Mrs. Hamlin in person at her place of employment on
25 March 13, 2006. Mrs. Hamlin informed the Probation Officer she would attend the sentencing hearing
26 and make an additional statement at that time. Mrs. Hamlin reported that she struggled on how to come
27 up with a statement that reflects the immense harm and injustice that was done to her, the children, and
28 her family by the defendant. She believed the focus of the trial and what was presented to the Jury was

1 | incredibly limited in comparison to the totality of events that precipitated the defendant's arrest.
2 | Throughout the interview, Mrs. Hamlin had difficulty controlling her emotions while recalling the
3 | suffering she endured and the effect it had on her children. Mrs. Hamlin related, "For a year and a half, I
4 | was in survival mode, twenty-four/seven, and I never knew whether or not I would make it to the next
5 | day. The abuse was much more severe and pervasive than the jury was allowed to hear." She further
6 | revealed, "He was very calculating in his abuse. He would target old injuries and strike at broken bones
7 | to cause more pain." In addition to all the physical abuse, Mrs. Hamlin disclosed that the defendant
8 | isolated her. She stated, "He tried to destroy every relationship that I had. My friends, my family, he
9 | even used my children and turned them against me, making them believe I had molested them." She
10 | further stated, "He even tried to destroy my memories of people. I began to think I was crazy." She
11 | further related that at times she began to confuse what memories were real and what memories she had
12 | made up in attempts to appease him. She recounted the incidents listed in the present offense and
13 | described the "horror" that she felt at those times. Mrs. Hamlin disclosed that the defendant is still
14 | harassing her and attempting to control her relationship with her children through the Family Court, by
15 | attempting to get full custody of the children. She said, "He furthers his insults on his 'Richard Hamlin
16 | Trial Defense Website,'" where he has written a response to the jury's verdicts, in which he greatly
17 | minimizes his responsibility and editorialized the jury's verdict, skewing it to say that the jury supports
18 | and justifies his defense." Mrs. Hamlin disclosed she believes the defendant shows a great lack of
19 | remorse for the abuse, and continues to call her and her children liars, stating that none of the abuse ever
20 | happened to the extent she reported it.

21 | Mrs. Hamlin revealed that she and her children still have grave concerns for their safety and there
22 | are several other people involved in the case who are concerned for their safety as well. Prior to his
23 | arrest, Mrs. Hamlin recalled the defendant had told her that even if he were in custody, he would be able
24 | to have her killed. Mrs. Hamlin also mentioned a time when the defendant told her that he had already
25 | killed two (2) people and would have no problem killing her too. Mrs. Hamlin stated, "The things that he
26 | said to me, the things that he did to me, I will never feel safe if he is out, and even then, I'm not sure if
27 | my children and I are totally safe while he is in custody." She further stated that she and two (2) of her
28 | children are still attending counseling. Her eldest daughter still continues to struggle with these events

1 and has difficulty being left alone. She still fears the dark and has a deep fear of someone coming into
2 the house to kill her while she sleeps. In a recent evaluation, her daughter was asked to rank her current
3 level of distress regarding the past events and she ranked her distress an eight (8) out of ten (10), with
4 ten (10) being the highest level. Her oldest son, Ryan, continues to be embarrassed for believing the lies
5 of his father. But Mrs. Hamlin related, "We had to believe in order to survive."

6 In regards to sentencing, the Probation Officer attempted to explain P.C. 654 issues, where the
7 defendant cannot be punished twice for related offenses. Mrs. Hamlin was visibly upset with the P.C.
8 654 issues and was alarmed that a sentence to "Life" in prison for the torture charge means the defendant
9 would be statutorily eligible for parole in seven (7) years. She declared, "He is saying that 'Life' in
10 prison is cruel and unusual punishment; and he'll be eligible for parole in only seven years? What he did
11 to me was cruel and unusual punishment. That was my life sentence and I did nothing wrong. I will be
12 in fear for my and my family's safety the rest of my life because of what he did. He needs to be in prison
13 as long as possible."

14 In regard to restitution, Mrs. Hamlin stated the Victim Witness Program has paid for counseling
15 and medical expenses to this date. However, she mentioned that she has permanent injuries to her nose
16 and teeth that will require surgery to repair, and she and her children are still in counseling. Mrs. Hamlin
17 requests that the defendant be held responsible for future medical and counseling expenses.

18 The Probation Officer contacted the Victim Witness Program, who reported the following as the
19 current restitution amounts: Susan, \$6,248.84; Ryan, \$2,800.00; Clare, \$1,260.00; Alec, \$4,480.00; and
20 Jennifer, \$210.00. Restitution is still ongoing for counseling expenses.

21
22
23 **CRIMINAL RECORD:**

24 None
25
26
27
28

1 **SENTENCING CONSIDERATIONS:**

2 **The defendant does not appear to be an appropriate candidate for probation based upon**
3 **the following factors:**

4 **Rule 4.413(a)** Statutory provisions prohibit a grant of probation pursuant to 1203(e)(3) P.C.
5 except in unusual cases where the interests of justice would best be served if the person were granted
6 probation. It is the probation officer's opinion the defendant does not represent the unusual case.

7 **Rule 4.414(a)(3)** The victims were vulnerable.

8 **Rule 4.414(a)(4)** The defendant inflicted physical and emotional injury.

9 **Rule 4.414(a)(6)** The defendant was an active participant in the crime.

10 **Rule 4.414(a)(7)** The crime is likely to recur.

11 **Rule 4.414(a)(8)** The manner in which the crime was carried out demonstrated sophistication
12 and professionalism on the part of the defendant.

13 **Rule 4.414(a)(9)** The defendant took advantage of a position of trust or confidence to commit
14 the crime.

15 **Rule 4.414(b)(7)** The defendant lacks remorse.

16 **Rule 4.414(b)(8)** It is likely that if not in prison the defendant would be a danger to others.

17
18 **The defendant appears to be an appropriate candidate for probation based upon the**
19 **following factors:**

20 **Rule 4.414(b)(1)** The defendant lacks or has a minimal history of criminal convictions.

21 **Rule 4.414(b)(4)** The defendant appears to have the ability to comply with the reasonable terms
22 of probation, as indicated by the defendant's age, education and health.

23
24 **CIRCUMSTANCES IN MITIGATION OR AGGRAVATION:**

25 No motions in mitigation or aggravation have been received. A review of the circumstances in
26 mitigation or aggravation indicate the upper state prison term would be appropriate as shown below:
27
28

1 **Circumstances in Aggravation:**

2 **Rule 421(a)(4)** The defendant induced others to participate in the crime or occupied a position
3 of leadership or dominance of other participants in its commission.

4 **Rule 421(a)(5)** The defendant induced a minor to commit or assist in the commission of the
5 crime.

6 **Rule 421(a)(8)** The manner in which the crime was carried out indicates planning,
7 sophistication or professionalism.

8 **Rule 421(a)(11)** The defendant took advantage of a position of trust or confidence to commit the
9 crime.

10 **Rule 421(b)(1)** The defendant engaged in violent conduct indicating he is a serious danger to
11 society.

12
13 **Circumstances in Mitigation:**

14 **Rule 423(b)(1)** The defendant has no prior record or has an insignificant history of criminal
15 convictions, including the recency and frequency of prior crimes.

16
17 **APPLICATION OF 654 P.C. SENTENCE:**

18 Section 654 of the California Penal Code states in pertinent part, "An act or omission that is
19 punishable in different ways by different provisions of the law . . . shall not punish the same act or
20 omission under more than one provision." This Section requires a stay of imposition of sentence on
21 separate Counts which represent the same act or omission. In this case, the Court must stay the sentence
22 imposed in Count(s) VI, IX, XIII, and XVII because the act described in this offense is the same crime
23 which formed the basis of the defendant's conviction for the crime charged in Count I.

SUGGESTED PRISON TERM:

If the defendant were to be committed to state prison, the appropriate term would be Life:

<u>COUNT</u>	<u>CHARGE</u>	<u>RANGE</u>	<u>BASE TERM</u>	<u>ENHANCE. CODE</u>	<u>PORTION STAYED</u>	<u>TOTAL TERM</u>
I	206 P.C.	Life	Life			Life
VI	422 P.C.	16/2/3 Mos./Yrs.	3 Years (upper term)		3 Years (654 P.C.)	0
IX	273.5(a) P.C.	2/3/4 Yrs.	3 Years		3 Years (654 P.C.)	0
XIII	273.5(a) P.C.	2/3/4 Yrs.	3 Years		3 Years (654 P.C.)	0
XVII	273.5(a) P.C.	2/3/4 Yrs.	3 Years		3 Years (654 P.C.)	0
II	273a(b) P.C.	180 days		Concurrent		0
III	273a(b) P.C.	180 days		Concurrent		0
IV	273a(b) P.C.	180 days		Concurrent		0
						<u>TOTAL TERM: LIFE</u>

EVALUATION:

Richard William Hamlin, age forty-five (45), appears before the Court having been found guilty by Jury verdict of five (5) felonies; torture, criminal threats, three (3) Counts of domestic violence, and three (3) misdemeanor Counts of cruelty to a child by causing unjustifiable mental suffering. Mr. Hamlin came to law enforcement with his wife, Susan Hamlin, and claimed there was a plot against his life and his wife was a participant in that plot. Mr. Hamlin also claimed that his wife had molested their children. An investigation by detectives was unable to corroborate anything that was initially reported by the Hamlin's. However, subsequent investigation revealed Mr. Hamlin was physically abusing and torturing his wife while taking advantage of a position of trust to manipulate his children for his own gain. This information was corroborated by evidence and independent witnesses; including the defendant's own children, and was found true beyond a reasonable doubt by a jury of his peers.

Susan Hamlin described a relationship where she had to believe the lies "in order to survive." Mrs. Hamlin stated she was beaten and threatened into reporting a story where she molested her children and plotted to kill her husband so the defendant's claims in a civil case against her father would be enhanced. (Through the investigation, it was learned that Mr. Hamlin was attempting to sue his father-

1 in-law for a large sum of money.) She willingly told deputies these false allegations in hopes that she
2 would be arrested so she, "could feel safe" from the defendant. As a result of the defendant's violent
3 behavior, Mrs. Hamlin suffered several broken bones and bruises that medical personnel stated, "Were
4 consistent with Mrs. Hamlin's history and timeframe for severe, acute and chronic physical assault."
5 The defendant also targeted old injuries and assaulted her where the injuries would not be easily seen,
6 which is especially cruel and callous; Mrs. Hamlin will require cosmetic surgery to repair the damage of
7 some of those injuries.

8 Mr. Hamlin took advantage of a position of trust and authority in committing these crimes,
9 resulting in unjustifiable suffering upon his children. He told all four (4) of his children that their
10 mother had molested them, yet none of the children have a single memory of any molestation ever
11 happening. His children all witnessed horrible assaults by the defendant on their mother that he
12 continues to deny. Two (2) of his children are still in counseling as a result of the trauma they suffered.
13 Further, the defendant induced his sons into going on a mission with him to commit murder. At one
14 point during that trip, the boys were so certain the defendant was going to shoot their mother with a gun
15 they put on hearing protectors. That the defendant would manipulate his own children in this manner
16 and use them against their mother for his own personal gain is especially egregious.

17 Although the defendant declined to make a personal statement to the Probation Officer,
18 information on an internet web site that is publicly published and copywrited by the defendant, entitled
19 "Richard Hamlin's Thoughts About the Jury's Decisions," shows he has little, if any remorse for his
20 actions. He contends that his wife is a liar and a pawn in the plot by his father-in-law to kill him. In the
21 defendant's response to the juries verdicts, he states, "Susan's claims that I attacked her with a sword, hit
22 her with a pipe etc. were all created out of her desperate attempt to take back her revelations about her
23 father Sidney Siemer."

24 The defendant is statutorily eligible for probation and appears capable of complying with any
25 terms and conditions of probation the Court would order. However, it is believed the defendant is not an
26 appropriate candidate for probation. The effects of the events, which happened over two (2) years ago to
27 the victims in this case, Susan Hamlin and her four (4) children, Ryan (age 18), Alec (age 14), Clare (age
28 10), and Jennifer (age 8), will be life long. The motive for the abuse, as well as manner and degree, both

1 physically and psychologically, show sophistication on the defendant's behalf bordering on sadistic. His
2 actions caused an unjustifiable amount of suffering upon five (5) victims, all of which were his
3 immediate family. A state prison sentence appears appropriate and necessary in this case for the safety
4 of the victims and to impress upon the defendant the seriousness of the crimes he committed.

5
6 **RECOMMENDATION:**

7 **It is respectfully recommended . . .**

8 The defendant's application for probation be denied and he be committed to the California
9 Department of Corrections for the term of Life, for Count I.

10 The defendant be committed to the California Department of Corrections for a term of three (3)
11 years, the upper term, for Count VI, said sentence stayed pursuant to §654 of the California Penal Code.

12 The defendant be committed to the California Department of Corrections for a term of three (3)
13 years, for Count IX, said sentence stayed pursuant to §654 of the California Penal Code.

14 The defendant be committed to the California Department of Corrections for a term of three (3)
15 years, for Count XIII, said sentence stayed pursuant to §654 of the California Penal Code.

16 The defendant be committed to the California Department of Corrections for a term of three (3)
17 years, for Count XVII, said sentence stayed pursuant to §654 of the California Penal Code.

18 The defendant be committed to the El Dorado County Jail for a term of one hundred and eighty
19 (180) days, for Count II, said sentence to run concurrent to Counts I, VI, IX, XIII, and XVII.

20 The defendant be committed to the El Dorado County Jail for a term of one hundred and eighty
21 (180) days, for Count III, said sentence to run concurrent to Counts I, II, VI, IX, XIII, and XVII.

22 The defendant be committed to the El Dorado County Jail for a term of one hundred and eighty
23 (180) days, for Count IV, said sentence to run concurrent to Counts I, II, III, VI, IX, XIII, and XVII.

24 The total term of commitment to the California Department of Corrections to be Life.

25 The defendant be given credit for eight hundred and forty-seven ⁹⁴⁵(847) days served, plus one
26 hundred and twenty-seven ¹⁴¹(127) days conduct credits (§2933.1 P.C.), for a total of nine hundred and
27 seventy-four ^{1,086}(974) days served pending these proceedings.
28

Pursuant to Penal Code §2933.1 and §667.5(c), the defendant is entitled to no more than 15 percent conduct credits for this offense.

The defendant be assessed a civil judgment pursuant to Penal Code §1202.4(f) for restitution in the amount of \$14,998.48 plus additional ongoing counseling expenses, said amount payable to Victim Witness.

The defendant pay a restitution fine in the amount of \$10,000.00 pursuant to Penal Code §1202.4.

The defendant pay a parole restitution fine in the amount of \$10,000.00, pursuant to Penal Code §1202.45, said fine stayed pending successful completion of parole.

The Court find the defendant is able to pay for the costs of the probation report in the amount of \$460.00 pursuant to §1203.1b of the California Penal Code.

The defendant submit to a blood test for DNA pursuant to §296 of the California Penal Code.

The defendant be advised of the period of parole supervision following his release from a California Department of Corrections facility.

The defendant be advised of the right to appeal the sentence and/or verdict in this matter.

Respectfully submitted,

JOSEPH S. WARCHOL II
CHIEF PROBATION OFFICER



By: Ben Kinser
Deputy Probation Officer

BK:jdj

Dated: June 15, 2006

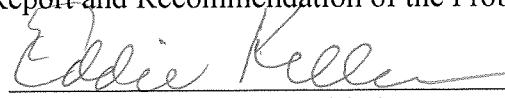
Approved:



Gary Romanko
Supervising Deputy Probation Officer

I have read and considered the foregoing Report and Recommendation of the Probation Officer.

Dated: 6/19/06


Judge of the Above Entitled Court

1 PUBLIC DEFENDER'S OFFICE
2 County of El Dorado
3 630 Main Street
4 Placerville, CA 95667
5 (530) 621-6440

6 Attorneys for Defendant

EL DORADO CO. SUPERIOR COURT

FILED

6-9-06

Jally M. Wauer
Clerk

8
9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF EL DORADO

P05CRF0132
0161

11 STATE OF CALIFORNIA,

CASE NO.: P05CRF1061

12 Plaintiff,

SUPPLEMENTAL POINTS AND
AUTHORITIES FOR MOTION
FOR NEW TRIAL

13 Vs.

14 RICHARD HAMLIN,

Hearing Date: 6-23-06

Hearing Time: 1:30 p.m.

15 Defendant.

Department: 2

16
17
18 JUROR MISCONDUCT

19 I

20 JUROR #8, JULIANNE FREY-KEELER, WITHHELD

21 AND GAVE FALSE INFORMATION DURING VOIR DIRE

22 A

23 STATEMENT OF FACTS

24 Julianne Frey-Keeler completed a juror questionnaire (see
25 Exhibit 1) under penalty of perjury. In her questionnaire she
26 wrote that she worked for Marshall Hospital. She listed her
27 "occupation" (page 3, question 7) as "admitting float". She
28

EK

1 wrote that her duties were (page 3, question 8) "patient
2 registration".
3

4 On page 7, question 39, Frey-Keeler was asked, "Have you
5 ever had any training, education or jobs or have you ever done
6 any volunteer work in any of the following areas? Circle each
7 one which applies to you." Frey-Keeler circled "medicine" and
8 did not circle "domestic violence".

9 On page 11, question 61, Frey-Keeler was asked, "Are
10 you...involved in any group or organization which is involved in
11 dealing with issues surrounding family or domestic violence?"
12 Frey-Keeler circled "No".
13

14 After the jury returned its verdicts on January 11, 2006,
15 Julianne Frey-Keeler spoke to newspaper reporter Ryan McCarthy
16 of the Mountain Democrat. Frey-Keeler's statements were
17 published on Monday, January 16, 2006.

18 Frey-Keeler was quoted as follows (Exhibit 2):
19

20 The juror said she wasn't surprised that Hamlin, who
21 lived in El Dorado Hills and had a successful career as an
22 attorney before his February 28, 2004, arrest, could be
23 guilty of domestic violence against his wife.

24 The juror noted that she works in a hospital emergency
25 room and that victims of domestic violence come from a
26 range of economic circumstances.

27 "You can be rich---or on welfare--- and have an
28 abusive spouse," she said.

"It can happen to anybody," Julianne said.

1
2 B

3 ARGUMENT

4 Clearly, juror #8, Julianne Frey-Keeler, withheld and gave
5 false information in her jury questionnaire which she signed
6 under penalty of perjury.

7 Based on the answers in the questionnaire, Frey-Keeler
8 falsely states that she has never had training, education or a
9 job in the area of domestic violence. She answered a second
10 question by stating she is not involved in any group or
11 organization which is involved in dealing with issues
12 surrounding domestic violence.

13
14 In her listing of occupation and duties she refers only to
15 "admitting float" and that her duties are limited to patient
16 registration.

17 However, when she spoke to reporter Ryan McCarthy of the
18 Mountain Democrat, she said that she worked in an emergency room
19 and she had dealt with domestic violence. She told McCarthy
20 that based on her work experience she has unique insight into
21 domestic violence victims and offenders. Frey-Keeler stated,
22 based on her emergency room work, that domestic violence victims
23 "come from a range of economic circumstances". She went on to
24 say that a victim can be rich or poor and that it can happen to
25 anybody.
26

27 It was this background that caused Frey-Keeler to state
28 that she was not surprised that Mr. Hamlin could be guilty of

1 domestic violence even though he had a successful career as an
2 attorney.

3 The defense would have used a challenge, and had challenges
4 available, on any juror who had a job which gave unique insight
5 as to victims of domestic violence. Frey-Keeler's position in
6 an emergency room and dealings with domestic violence victims to
7 such an extent that she would say that they come from a range of
8 economic circumstances would have disqualified her in the
9 opinion of the defense.
10

11 Mr. Hamlin was entitled to the information that Frey-Keeler
12 revealed to the Mountain Democrat. Her false statements and
13 withholding of pertinent information involving domestic violence
14 is juror misconduct.
15

16 In People v. Galloway (1927) 202 Cal. 81, the California
17 Supreme Court ruled that giving false information or withholding
18 information is juror misconduct and grounds for the granting of
19 a new trial. The Court stated,
20

21 In Sherwin v. Southern Pacific, supra, a civil case,
22 this Court directly intimated that false statements made by
23 a juror on his voir dire examination furnish a sufficient
24 grounds for granting of a new trial, saying, "It may be
conceded that the conduct of Juror Horton in giving a
false answer to questions put to him constituted misconduct
on his part sufficient to warrant a new trial."

25 Hayne on New Trial and Appeal, volume 1, page 226,
26 states the rule as follows: If a juror be examined as to
27 his qualifications and he does not answer truly, a new
28 trial will be granted. Where the party has examined the
jurors regarding their qualifications, and they do not
answer truly, it is manifest that he is deprived of his
right of challenge for cause and is deceived into

1 foregoing his right of peremptory challenge. If on
2 ascertaining the truth he were not allowed to present the
3 matter on motion for a new trial, the grossest injustice
4 might be done.

5 And accordingly, in most states, the fact that a
6 juror answered falsely as to his qualifications is a
7 recognized ground for new trial.

8 In People v. Blackwell (1987) 191 Cal.App.3d 925, the Court
9 stated,

10 The prosecution, the defense and the trial court
11 rely on the voir dire responses in making their
12 respective decisions and if potential jurors do not respond
13 candidly the jury selection process is rendered
14 meaningless. Falsehood or deliberate concealment or non-
15 disclosure of facts and attitudes deprives both sides of
16 the right to select an unbiased jury and erodes the basic
17 integrity of the jury trial process.

18 Intentional concealment of relevant facts or the
19 giving of false answers by a juror during voir dire
20 examination constitutes misconduct.

21 In In re Hitchings (1993) 6 Cal.4th 97, the California
22 Supreme Court stated at page 111,

23 A juror who conceals relevant facts or gives false
24 answers during the voir dire examination undermines the
25 jury selection process and commits misconduct.

26 False answers or concealment also eviscerate a
27 party's statutory right to exercise a peremptory challenge.

28 Frey-Keeler's omissions and false statements are exactly
what case law has defined as misconduct. The defense as a part
of its well thought out trial strategy would not have allowed a
potential juror with Frey-Keeler's background to sit as a Juror.
The defense in this case had available numerous challenges

1 remaining and would have used a challenge if this information
2 had been included in her questionnaire.

3 In fact, a significant argument could be made that she
4 should have been removed for cause. What is now known is that
5 Frey-Keeler does work in a job that deals with domestic
6 violence. We now know that she has had first-hand dealings with
7 domestic violence, to such an extent that she has formed unique
8 insights into this area. Based on what we now know, it seems
9 clear that she was involved in gathering information surrounding
10 domestic violence attacks and actually saw injuries associated
11 with domestic violence. Ms. Frey-Keller would be hard-pressed,
12 with these new revelations, to say that she has not formed clear
13 and defined opinions about domestic violence and those accused
14 of such conduct.

15 As case law clearly states, the defense should not be
16 deprived of its right to challenge a juror due to being
17 deceived. Such non disclosures and false statements truly do
18 render the jury selection process "meaningless" if such
19 misconduct is tolerated by the court.

20 For this reason, the defense requests this Court to make a
21 finding of juror misconduct and, as a result of that misconduct,

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grant a new trial.

Dated: June 8, 2006.

Respectfully submitted,



ROBERT BANNING
Attorney for Defendant

Juror Identification Data and Verification

Last Name: Frey-Keeler First Name: Julianne

-INSTRUCTIONS-

FIRST: Print your name above and at the bottom left hand corner of EACH page.

SECOND : Carefully and completely answer all the questions in the questionnaire.

THIRD: Return to this page and sign the declaration below that you have answered the questionnaire to the best of your knowledge, and under penalty of perjury.

LAST: Turn in the questionnaire as directed and ordered by the court.

DECLARATION

I have read and completed the attached questionnaire. I declare under penalty of perjury that my answers are true and correct to the best of my knowledge. I further declare that I have received no assistance from any other person how to answer any of the questions.


Prospective Juror Signature

Julianne Frey-Keeler

Print your name

Executed on

, 2005, at Indocerville, California

PERSONAL DATA

1. Juror Name: Julianne D. Frey Keeler

7. Occupation (last occupation if now retired): Admitting float

Julianne D. Frey Keeler

Print your name

39. Have you ever had any training, education or jobs, or have you ever done any volunteer work in any of the following areas? **Circle** each one which applies to you.

Medicine	Nursing	TV/Radio
Psychology	Counseling	Laboratory
Drugs/Alcohol	Law	Mental Health
Security	Corrections	Law Enforcement
Guns	Justice system	Local/State Government
Investigations	Scientific	Child Abuse
Victims of Crime	Newspapers	Domestic Violence

40. Are you related to or close friends with anyone who works or has special training in any of the following areas? **Circle** each one which applies to you.

Psychology	Medicine	Jail/Prisons
Drugs/Alcohol	Law Enforcement	Criminal Law
Victims of Crimes	Courts	Domestic Violence
Justice System	Security	Child Abuse
Investigations	Mental Health	Family Counseling

41. Do you consider yourself an expert of any subject (not just those above) YES (NO)

Julianne Frey-Keeler

Print your name

61. Are you, a relative, or anyone close to you involved in any group or organization which is involved in dealing with issues surrounding family or domestic violence? YES **NO**

If YES, what organization(s)? _____

62. Have you done any studying or reading about family or domestic violence? YES **NO**

If YES, what? _____

Julianne Frey Keeler

Print your name

Monday, January 16, 2006

Satanic cult account didn't sway juror

By Ryan McCarthy

Democrat staff writer

A juror in the Richard Hamlin trial says the criminal defense attorney seemed arrogant in the courtroom and that she didn't believe his account that a Central Valley satanic cult sought to murder him.

"I think it was just a big story Richard made up," said the juror, a 36-year-old Placerville resident.

She spoke of Hamlin's demeanor during the long trial in Placerville.

"I just think he's very egotistical — he's above it all," said the juror, whose first name is

Julianne. She declined to provide her last name.

"Even when the verdict was read he was still very cocky," she said.

Hamlin, 45, was convicted of torture and faces a possible life prison sentence.

Asked about Hamlin's six-hour closing argument at the trial's end, the juror said, "God, it was long."

She said the defense attorney's argument did help him in connection with an allegation that Hamlin had swung a sword at his wife and cut her finger with the weapon.

The juror said she wasn't surprised that Hamlin, who lived

in El Dorado Hills and had a successful career as an attorney before his Feb. 28, 2004, arrest, could be guilty of domestic violence against his wife.

The juror noted that she works in a hospital emergency room and that victims of domestic violence come from a range of economic circumstances.

You can be rich — or on welfare — and have an abusive spouse, she said.

"It can happen to anybody," Julianne said.

E-mail Ryan McCarthy at rmccarthy@mtdemocrat.net or call 344-5071.

DELAY

involving allegations of great bodily injury.

The jury also deadlocked on three of the charges.

Deputy district attorney Vicki Ashworth, the prosecutor in the trial, said in court Friday that the jury — split 7-5 on one charge and 8-4 on two others — favored conviction.

She said in court of the defense that, "I realize they are going to have motions.

"I have victims who are

Hamlin during the Friday court hearing also asked for — and will receive — transcripts of the trial testimony of more than 10 witnesses. They include two El Dorado County sheriff's detectives, a pastor who went in January 2004 to the Hamlin home in El Dorado Hills at Hamlin's request and Marcel Matley, a document examiner who worked with CBS news on their report about President Bush's National Guard service

ter Susan Hamlin wrote to a friend stating she was withdrawing from a murder plot that Richard Hamlin said a satanic cult had organized against him.

The letter was written weeks before Richard Hamlin's arrest on suspicion of domestic violence.

Judge Keller said he was skeptical that examining the slants of letters and the pressure of pen on paper allows some-

continued from A-1

RE: Richard Hamlin
P05CRF0161

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of El Dorado. I am over the age of eighteen years and not a party to the within entitled action; my business address is 630 Main Street, Placerville, California.

On June 9, 2006, I served the within SUPPLEMENTAL POINTS AND
AUTHORITIES FOR MOTION FOR NEW TRIAL on the parties in said action,
by hand:

Vicki Ashworth
EL DORADO COUNTY DISTRICT ATTORNEY
515 Main Street
Placerville, CA 95667

I, TARA J. ANGEL, declare under penalty of perjury, that the foregoing is true and correct.

Executed on June 9, 2006, at Placerville, California.


TARA J. ANGEL